HEARINGS

BEFORE THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

OF THE

HOUSE OF REPRESENTATIVES

ON

THE BILLS RELATING TO ROUTING SHIPMENTS AND RAILROAD FREIGHT RATES

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ROUTING SHIPMENTS AND RAILROAD FREIGHT RATES.

RIGHT OF SHIPPERS TO ROUTE FREIGHT.

THURSDAY, *March 5, 1908.*

Committee called to order at 10.30 a. m., Hon. W. P. Hepburn in the chair.

STATEMENT OF MR. J. C. LINCOLN, PRESIDENT OF THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE, ST. LOUIS, MO.

The CHAIRMAN. What bill do you propose to discuss, Mr. Lincoln?

Mr. LINCOLN. Mr. Chairman and gentlemen, there are several bills before the House committee in relation to transportation matters upon which a committee appointed by the National Industrial Traffic League desires to be heard.

The CHAIRMAN. What is that league?

Mr. LINCOLN. It is an organization composed of the commissioners, managers, or gentlemen in charge of the traffic of the various commercial organizations of this country, such as the Merchants' Exchange of St. Louis, the Business Men's League of St. Louis, the Manufacturers' Association of St. Louis, the Board of Trade of Chicago, the Chicago Association of Commerce, the Board of Trade of Kansas City, the Commercial Club of Kansas City, the Commercial Club of Omaha, and similar organizations in Indianapolis, Louisville, Cincinnati, Pittsburg, Milwaukee, Racine, Des Moines (Iowa), Quincy (Ill., Memphis, Little Rock, Fort Worth (Tex.), Montgomery (Ala.), in fact all leading cities of the United States, there being probably twenty-seven cities. In addition to that we have the traffic men who are connected with the leading industrial organizations of this country, embracing in our membership between 25,000 and 30,000 shippers through either commercial organizations or by individual representation.

Mr. TOWNSEND. Do you represent all of these organizations.

Mr. LINCOLN. I am president of the National Industrial Traffic League, and am only appearing in that capacity upon those subjects upon which the National Industrial Traffic League has declared itself by resolutions.

The CHAIRMAN. What are those subjects?

Mr. LINCOLN. One of the subjects is that embraced in House bill 156, respecting the right of the shipper to route freight. I appear upon these subjects upon action taken by the National Industrial Traffic League. The names of the committee are: L. B. Boswell, commissioner Quincy freight bureau, Quincy, Ill.; Mr. P. M. Hanson, chairman traffic committee Missouri Manufacturers' Association; Mr. H. C. Barlow, executive director Chicago Association of

Commerce; Mr. U. S. Pawkett, commissioner of Fort Worth traffic bureau; Mr. J. C. Lincoln, president and commissioner Merchants' Exchange Traffic Bureau, St. Louis; Mr. W. E. Cooke, secretary National I. T. League and traffic manager Electric Automatic Company, and Mr. I. S. Bassett, commissioner of the chamber of commerce, Pittsburg.

The CHAIRMAN. Are they present?

Mr. LINCOLN. Mr. Pawkett is detained by the serious illness of his mother and has remained in Texas. Mr. Barlow is expected this morning.

There is also a desire upon the part of one or two members to speak in their individual capacity upon the car-service bill.

Now, I will give you the titles to the bills.

The CHAIRMAN. Yes; the numbers and the titles.

Mr. LINCOLN. I have already referred to H. R. 156. The second bill is H. R. 7568, as to giving power to the Interstate Commerce Commission of suspending proposed advance of rates. There are other bills upon some of these same questions, but I only refer to the bills which I am going to address myself to.

Mr. ESCH. That would cover the so-called "Fulton amendment?"

Mr. LINCOLN. I see it is slightly modified; but the object sought is the same, using a different way of reaching it.

The next bill is House bill 16491, respecting the sum of the locals. H. R. 16741 is a bill on the same subject, and we might say that on other subjects there are different bills.

The next bill is H. R. 4801, in regard to the amending of section 4 of the long and short haul clause.

There is another proposition that was before the league upon which I have not as yet discovered any bill. I understood it was coming before Congress, but have not located the bill as yet, and that was in regard to protection from erroneous quotations made by agents or officers of a company. Is there such a bill?

Mr. TOWNSEND. I think that is Senate bill 621.

Mr. LINCOLN. Very well; we have prepared a resolution on that. Then there is the car-service bill, which, as I say, could not be handled by the league as a league proposition. We have not as yet taken action thereon, and it would have to be discussed by such members of this committee as might desire to be heard in their individual capacity. That bill is numbered 13841.

Mr. ESCH. That is the Smith-Culberson bill?

Mr. LINCOLN. Yes.

I will attempt to be quite brief, and I presume it is entirely proper, as representing the views of the league, to suggest changes that we would think desirable; but by way of preface to my remarks, and as I would like to have it appear in the record, I want to make an opening statement. [Reads:]

We appear before you as a committee appointed by the National Industrial Traffic League, which represents nearly 30,000 shippers in about 27 of the largest cities of the United States. Our purpose is not to discuss at length, but to call pointed attention of the committee to certain measures which we believe should be enacted into law for the better protection of shippers in their commercial relations as between buyer and seller and the carriers of this country.

We are aware of the fact that a great number of bills are pending before Congress tending to the correction of the existing law and proposing to confer upon the Interstate Commerce Commission additional powers and privilege.

As conservative men of business, we hold to the view that the law is as yet in its infancy in the practical application of the act as amended in 1906, and it would probably be unfair to all of the interests affected or to be conserved by its operation were judgment to be rendered upon it at this time.

We believe that it is in keeping with the general situation affecting both shippers and carriers to permit this law to stand for a little longer time before attempting radical or too widespread changes or amendments.

We do ask, however, that upon a few more important propositions shippers shall be heard through this committee, which we constitute, to the end that amendments which are required to give practical effect to the new law and enable the Interstate Commerce Commission to enforce it in a sane and just manner, and also permit the courts to make decisions based upon a practical proposition which will inure to the benefit of shippers and carriers alike. We invite your attention to the subjects which we will propose for your consideration to-day and respectfully request that, in so far as you may be able to do so, that you will bring relief to the shippers of this country through amendments of the law which we seek, that are intended to more nearly perfect it than as it now stands.

Respectfully submitted.

U. S. PAWKETT,
Com. Ft. Worth Traffic Bureau.
J. C. LINCOLN,
President Com. Merchants' Ex. Traf. Bureau, St. Louis.
W. E. COOKE,
Sec. Nat. I. T. League.
L. B. BOSWELL,
Commissioner Quincy Freight Bureau.
P. M. HANSON,
Chairman Traffic Com. Mo. Mfgs.' Assn.
H. C. BARLOW,
Executive Director Chicago Asson. of Commerce.
J. S. BASSETT,
Com'r Chamber of Com., Pittsburgh.

The first bill is H. R. 156, introduced by Mr. Robinson, respecting the right of shippers to route freight. The title of the bill is "permitting shippers to route their shipments, and authorizing the collection of only the lowest rates published between points of origin and destination when shipments are not routed by the shipper."

The Interstate Commerce Commission in its Circular No. 14 A, under the head of "routing and misrouting freight," made an administrative ruling to this effect:

In order to secure desired delivery to industries, plants, or warehouses and avoid unnecessary terminal or shipping charges, the shipper may direct as to terminal routing or delivery of shipments which are to go beyond the lines of the initial carrier; and his instructions as to such terminal delivery will be observed in routing and billing such shipments. The carriers are not required to observe instructions to shippers as to intermediate routings.

They follow that up by stating that if there is an available rail and water route and an available all-rail route, the rate being higher by the all rail than the rail and water route, the shipper may elect which of those two routes he desires to use, the water or the rail; but where there is an all-rail route only, by more than one route, there is reserved to the initial carrier the right to designate the intermediate routing. The effect of this ruling was to take away from the shipper the control of his freight beyond the initial line except as to terminal delivery, regarding which his instructions were to be observed by the carriers.

Mr. TOWNSEND. Right there; under that ruling did the Commission hold that it could force a shipment through from point of starting to the point of destination over two connecting lines?

Mr. LINCOLN. No; the Commission under that ruling simply gave the shipper the right to designate the terminal delivery. The carrier has a right to route it by such lines as they might select in order to reach the terminal. Now, there was a condition, which I treat upon, made by the Commission as to the initial carrier reserving that right; that is, if they want to reserve to themselves the right of routing, they could do so by incorporating that rule in their tariff; and if it was incorporated in the tariff, and in their published rate schedule, then the initial line had the right to dictate the intermediate routing.

The CHAIRMAN. Did that question arise out of any shipment of fruit from the State of California?

Mr. LINCOLN. I wanted to make a little explanation in relation to that, because I want to be fair in every respect,

Mr. RICHARDSON. Before you go into that, this rule provides that if the carrier does not select that route, he shall send it over the route at the lowest rate.

Mr. LINCOLN. Yes; the bill provides that. That is just what we want to support, and we explain that we want to support it because there is some objection to the bill from other sources. The bill first gives the shipper the right to route the shipment himself, and, second, if he leaves it with the carrier to make the routing, then the carrier must give the shipper the benefit of the lowest rate.

Mr. RICHARDSON. In other words, it requires him to ship it over the lowest route, and therefore if the shipper omits to give that direction he does not lose anything at all?

Mr. LINCOLN. No, sir.

Mr. ADAMSON. Ought they not also to be required to route over the most expeditious route?

Mr. LINCOLN. I was going to treat on that in my discussion.

Mr. BARTLETT. You say that you represent 27 of the largest cities. Have you anything from Atlanta, Ga?

Mr. LINCOLN. No; our organization was formed in August of last year, and originated in the Mississippi Valley, Chicago, St. Louis, and that territory, and we have not gotten to the Southeast as yet.

Mr. BARTLETT. You have a representative from Montgomery, Ala.?

Mr. LINCOLN. We have one from Montgomery; yes. The particular section as to the routing and misrouting of freight to which I referred is section No. 57, page 44, Interstate Commerce Commission circular 14 A.

Mr. TOWNSEND. May I ask you, prior to your argument, if you have ever had experience in railroading.

Mr. LINCOLN. I have had thirty years' experience.

Mr. TOWNSEND. In what capacity?

Mr. LINCOLN. From office boy to assistant freight traffic manager.

Mr. LOVERING. On what lines?

Mr. LINCOLN. The Missouri Pacific, as assistant freight traffic manager, in service of that company from 1888 to 1906. I have had experience in every department of railroading.

The effect of this ruling was to take away from the shipper the control of his freight beyond the initial line, except as to terminal delivery, regarding which his instructions were to be observed by the carriers. Practically this meant that beyond the selection of an initial and the terminal delivery, which might mean nothing more than a switching delivery, either at point of origin or destination, the shipper had no control over the routing of his freight shipments.

It is our argument that the shipper has a property right in his freight shipments, which in no way inures to the carrier when the property was delivered to the carrier for transportation; that this property right could not lawfully be taken away from the shipper; that the routing by any particular road or roads often added to the value of property shipped and the direct result of a diversion of the property from a route chosen by the shipper took away from him that value without compensation.

We further hold that where a line publishes joint rates by two or more routes that such lines are legally bound by the rates applicable via the several routes, and it is properly within the discretion of the shipper to elect which of these routes he may desire to use.

From my personal knowledge I know that that is often occurring, where one line could give the service and the other line could not, and the line which could not give the service desiring the long haul would retain the routing in its own hands.

The CHAIRMAN. The whole of that proposition depends upon the first proposition as to the property right of the shipper in the matter of routing. I would like to hear from you upon that.

Mr. LINCOLN. If you ask me to argue from a legal standpoint, I will say that I am not a lawyer, and can only speak from a commercial standpoint.

The CHAIRMAN. It is a new idea to me, and I thought probably you had given attention to it.

Mr. LINCOLN. The shipper should have a property right in his goods which he delivers at destination, and the service has a great deal to do with the value of those goods. So if he can employ a routing that will give him the service, the most perfect service, he then is enabled to determine more accurately when his shipment will arrive at destination and be able to fulfill his contracts. I have known of cases, for example, "corn," especially during the germinating season, where it would lie in transit practically two, three, or four weeks, while other routes were able to handle the corn with dispatch. While in transit the corn will heat, and is frequently refused at destination by reason of the delay, and then there is a loss involved which is always disputed as to the amount.

There are large concerns in this country that try to divide up their business between different lines, as nearly as they can, dealing with all lines all over the country. They want to be able to patronize the line that gives them the most attention, both as to information, as to where the freight is, and the deliverance. Furthermore, the right of the shipper to declare the routing enables us to get the benefit of competition; for example, at St. Louis we have lines running from there to connect with other lines at Louisville, at Memphis, or at Birmingham, going to the Southeast. All of those connecting lines have their representatives in St. Louis soliciting business, keeping the shipper in touch with the business, and soliciting, of course, for delivery to them at the junction point with the originating line. If the originating line controls the routing of the business and took control—I do not say that that condition exists to-day, but if they did do it they could take the business away from the connecting line as they may see fit, and the connecting line would be dependent upon the initial carrier for tonnage instead of upon the solicitation to the shipper direct.

Mr. RICHARDSON. Do you not think that the doctrine you are advocating, that the shipper should be allowed to select his own route upon which his goods shall be shipped, is approaching very closely and

surely the line of the Government taking charge of the business of the railroads?

Mr. LINCOLN. I can not see wherein it is. The shipper is only going to select the route where the line has advertised itself as a common carrier. He is going to select one of two, three, or four routes where the initial line, as I say, has advertised itself a common carrier and has established joint through rates over those routes.

Mr. RICHARDSON. The proposition you advocate of requiring the common carrier to ship the route of the lowest charge is all right, but as to the other proposition it looks as if you were taking charge of the policy of the road and running its business.

Mr. LINCOLN. No; there are two propositions, on both of which we are in the affirmative. One is that the shipper be permitted to elect the route that he wants to ship his goods over, and of course when he elects that route he must pay the rate applicable by that route whether higher or lower; but where the shipper waives the right of routing and places the routing in the hands of the initial carrier, then the initial carrier must give the shipper the benefit of the lowest rate.

The CHAIRMAN. That is an entirely different proposition from the other one.

Mr. LINCOLN. But there are two different propositions.

The CHAIRMAN. The proposition of the right of the shipper to the lowest possible rate is entirely different, it seems to me, from his right to require the carrier to form a routing connection with every possible road that he might connect with. Your proposition would involve the necessity of through routes on every possible road.

Mr. LINCOLN. No; we do not so hold. We only hold that the shipper should be able to make use of those advertised routes that the line was party to; not to establishing through routes, but only to make use of the advertised routes, such as the line running from St. Louis to Atlanta, Ga., for example, there being five different routes, through Cincinnati, Evansville, Cairo, Memphis, and so on.

The CHAIRMAN. Suppose the shipper selects a route that the initial carrier has no through-rate connection with?

Mr. LINCOLN. If there is no joint through rate via the route the shipper elects, and he designates the route, which he would have to do to elect it, he should pay the rate applicable by that route if he desires to take control of his property.

Mr. RICHARDSON. But does not your proposition imply further that the shipper has a knowledge, or ought to have knowledge, of all the policies, all the business arrangements, and ideas that are governing that road in conducting its business; and if he has not, he is ignorantly doing that which may conflict directly with the internal policy of the road?

Mr. LINCOLN. I do not think so; I do not think he has to know anything of the affairs of the road.

Mr. RICHARDSON. Admitting that the carrier must ship it over the cheapest road, giving the shipper the benefit of everthing you contend for, yet it puts him in the attitude of supposing that he is acquainted with the policy of the road. Every man conducts his own business on his own lines, and generally on different lines from others, and the railroads do the same thing. It seems to me that your proposition implies that, and at the same time you admit that the carrier should

be required to ship over the cheapest route if the shipper does not select the routing.

Mr. LINCOLN. If the shipper does select a route and does not select the cheapest road, then the carrier should not give him the benefit, but if the shipper does not select the route, then the road may do so under certain conditions favoring the traffic. The shipper has the option of giving his business to the road giving the best attention to the business.

The CHAIRMAN. I think from your last answer that I do not exactly understand your proposition. Let me give you a case, and perhaps you may be able to throw some light upon it. Does the Union Pacific road, say at Omaha, have a through-route connection with all of the five or six main roads that it meets at Omaha, the Burlington, the Rock Island—I know that it has with the Northwestern, but does it have with all of the others?

Mr. LINCOLN. The Union Pacific has joint through routing with all the lines east of Omaha—that is, a shipment from Denver going to New York can be routed over the Northwestern, the Rock Island, the Chicago and Great Western, the Chicago, Milwaukee and St. Paul, the Burlington, and other lines.

The CHAIRMAN. Your proposition would simply require that the shipper had the right to designate any one of those lines?

Mr. LINCOLN. Any one of those lines that he wants to use east of Omaha.

Mr. RYAN. That is, any connecting line where it has an established through rate.

Mr. LINCOLN. He can not pay anything else but the legal rate. If there is no joint rate, then he must pay the legal rate, which is the combination rate. But there are joint rates. The Union Pacific has an Omaha connection, a Kansas City connection, a St. Joseph connection, and on a shipment going from Denver to New York they may want to give all their business to the Northwestern Railroad at Omaha, because there is a community of interest, you might say, or they may want to give it all to the Chicago and Alton at Kansas City, as there is a certain community of interest there. Those lines must be giving service which will afford the shipper the attention to his business that he requires as to the handling of the shipments and the delivery. The shipper says:

I elect one of these other lines with which you have joint and legal rates, because I can get better service.

Mr. BARTLETT. Does this compel finding out the lines with which the initial road has joint routing?

Mr. LINCOLN. That is the proposition where it has the joint routing.

Mr. ESCH. Would this selection by the carrier tend to give us competition between connecting carriers and improve the service?

Mr. LINCOLN. Absolutely; there is no question about that.

Mr. ESCH. So there would be a general improvement all round?

Mr. LINCOLN. As I say, it tends to competition between carriers to give service, because the shipper is going to use the lines that give him the best service, which always tends to make the other lines improve their service to meet the competition.

The CHAIRMAN. Competition of service rather than competition of rate?

Mr. LINCOLN. It is competition of service rather than rates; service, and the close touch with business in keeping the shipper informed concerning the service.

Mr. LOVERING. What is the community of interest that makes these roads send the freight by the longer route, the more expensive route, or what is there besides community of interest that makes these roads send their freight other than by the cheapest route?

Mr. LINCOLN. Sometimes there is what you might say the division of rates, the better division with one road than another. There is another thing, that a road may have a certain tonnage of freight originating on its own line, and it says to the connecting line, "Here, you have got to give me a certain tonnage in return or you can not have our tonnage," the originating line controlling more or less tonnage. They can demand of their connections that there must be a certain tonnage given in return for the tonnage that the originating line gives its connections or they will not route the business over that road. It also can be used for the purpose of punishing a connection where a road is dissatisfied with some of the connection's rules or regulations or where they do not want to concur in certain rules or regulations. It can be used in many ways.

Mr. LOVERING. And thereby the shipper suffers?

Mr. LINCOLN. Thereby the shipper suffers.

It is further submitted that under the ruling of the Commission it would enable the stronger carriers or systems to favor their allies and friendly connections and to punish other roads which might refuse to join in action with regard to rates and regulations desired by the stronger lines but adverse to the interests of the smaller lines and burdensome and injurious to shippers. In fact, if the right of routing was vested with the initial carrier it would practically authorize a tonnage pool and would prevent the free competition for traffic as contemplated by law.

While the Commission has held carriers will be responsible for routing shown in bill of lading when such routing is accepted by the carrier, they recognize that where the initial carrier reserves to itself the right to dictate intermediate routing by the publication of such a rule in its tariff that such right is preserved to the initial carrier, which ruling was undoubtedly based upon the decision of the Supreme Court of the United States in the case of the California Fruit Shippers *v.* Transcontinental Carriers.

That involves a peculiar traffic moving at short intervals, requiring the gathering of cars from all over the country and arrangements for refrigeration and other service in transit, and the initial carriers, in the case of handling of fruit, reserve to themselves the right of routing that particular traffic beyond their connections with other lines.

That was the case decided by the United States Supreme Court, and possibly has had its bearing upon the ruling made by the Interstate Commerce Commission.

Mr. TOWNSEND. What have you to say to the argument that was put forth at that time, that the initial carrier being responsible for the delivery of the fruit and being obliged to respond in damages for any disturbance to the fruit whereby it was destroyed or injured, whether they ought not, in self-preservation, be allowed the right of selection of route over which they feel the fruit will be least damaged?

Mr. LINCOLN. I think as to perishable freight it is a very wise protection, for it requires a very different treatment from any other business. Upon the Iron Mountain road, with which I was connected, we handle a great many strawberries and have to arrange for that movement in advance of the growth of the berries. We estimate the crop and the cars it will require, and as we can not have

all of the necessary cars ourselves, we ask our connections. We estimate about where it will be distributed and we call upon the connections to furnish us so many cars to be used in the strawberry business. We also have to arrange a schedule for the icing in transit. A good deal of attention is required in connection with perishable freight, and there ought to be some discretionary authority with the Commission under those conditions as to the freight and the control of the route.

Mr. ESCH. Does this bill provide for such?

Mr. LINCOLN. It does not; but it is a thought that we want to bring to your attention, as it would come to your attention with the California fruit case, and you no doubt would inquire into that. There is the watermelon traffic, a perishable fruit proposition that I have had a great deal of experience with. We handle in southern Missouri in a space of about six weeks 1,500 to 2,500 carloads of watermelons. We always send our people out in advance to ascertain how many cars will have to be used, what is to be the estimated crop, and where they think the melons will go—how many to St. Paul territory, to New York, Chicago, and so on. As this information comes in, the Iron Mountain road would see that it would not have sufficient equipment to supply this six weeks' movement at one time, and they would make requisition upon the connections to furnish so many cars, the Burlington, the Wabash, the C. & A., to be used in the watermelon movement and to send them down about the time we thought the melons would commence to move, endeavoring to anticipate it by two or three days. In handling the cars from connections, on perishable freight, there should be some authority over the routing of that business so as to secure the return of the cars to the roads from which the initial line borrowed them. Perishable freight is a different proposition from dead freight entirely.

The CHAIRMAN. Would that argument apply in the same way to cattle, live stock?

Mr. LINCOLN. As to the routing of cattle?

The CHAIRMAN. Yes.

Mr. LINCOLN. All of my experience in handling cattle has been on local lines, short lines. There of course the service originated on one line and was taken to the market. We have had very few through shipments. As to the Missouri Pacific, nearly all the cattle shipped over that road would originate in Kansas and Missouri, south and west of Kansas City, and even though it went to Chicago and St. Louis, it would be billed via Kansas City and through that market. There was no question about the train service there. Some of these other gentlemen have had something to do with that question.

It seems hardly fair to the average shipper that an advantage should be taken by the carriers of a decision of the Supreme Court in a case where there are exceptional circumstances and conditions which made it necessary for the initial carriers to reserve for themselves the control of the routing through to ultimate destination.

In view of the decision in the Fruit case referred to it seems that the Interstate Commerce Commission have really gone as far in the direction of giving shippers the control of routing of freight as it is possible for the Commission to do until Congress shall enact a law giving to the shipper the property rights which properly belong to him by the control of his freight and the routing thereof.

Some of the carriers are now taking advantage of the Commissioners' ruling by incorporating in their tariffs the right to route shipments beyond their own rails; as the law provides the lawful charge is the tariff rate via the route over which the shipment moves, the responsibility of the carrier only extends to the protection of the

rate via the route designated by the shipper, even though such rate may be higher than the rate by some other route.

When the shipper does not provide the routes by which the freight shall be transported, it is then the duty of the initial carrier to charge and collect only the lowest rate published between points of origin and destination.

We therefore direct the attention of your committee to the following resolutions adopted by the National Industrial Traffic League, which is in advocacy and support of a bill introduced by Mr. Robinson, H. R. 156.

Whereas the Interstate Commerce Commission have ruled that shippers have no right to indicate the intermediate ruling where the carriers have reserved that right by so printing in their tariffs; and

Whereas the carriers have no property rights in the goods transported, and therefore debarring the shipper of such right is virtually confiscating his property, as a right to route his freight is a legitimate privilege of the owner; and,

Whereas such really makes possible the most effective of pools, resulting in ruin to the smaller lines and promoting monopoly among the large systems: Therefore, be it

Resolved, That this league is of the opinion the decision, if law, is not equity and is in violation of the constitutional rights of the individual; and we pledge ourselves to use every honorable means to have the injustice corrected.

Mr. KNOWLAND. I would like to ask you a question. I am from California, and am of course interested in the transportation of fruit. Under this bill, if the shipper should designate a certain line or certain connecting lines for his fruit to be carried upon, and there should be a blockade on any one of those lines causing the railroad company to hold the fruit until damaged, under this bill they could not come upon the railroad for damages, could they?

Mr. LINCOLN. I do not know; that is a legal question.

Mr. KNOWLAND. But the shipper had designated a certain route, and only that certain route, for his freight.

Mr. LINCOLN. The Commission in their rulings have designated that certain rules be observed in cases of washouts or operating conditions that make it impossible to use a line causing diversions.

Mr. ADAMSON. If it goes upon regular advertised lines open to this business, how is the legal question of liability affected at all? As a matter of fact the shipper selected the route.

Mr. LINCOLN. I do not know how the liability would be affected.

Mr. ADAMSON. They are all open routes, all advertised and all running, and the shipper may designate either one. I can not see how the question of liability for accident would be affected by the selection.

Mr. LINCOLN. Of course the roads are exempted from liability under the common law as to acts of Providence.

Mr. ADAMSON. The liability is not affected by the question of designation of routes.

Mr. LINCOLN. No; that is not affected by either one.

The bill referred to in section 1 gives the shipper the right of routing. In section 2, where the shipper does not select a route and it is left to the carrier, it shall then give the shipper the benefit of the lowest published rate. As pointed out in our remarks, it is possible that some exception should be made as to perishable freight requiring different service and different conditions from other traffic.

That is all I care to say upon H. R. 156.

Mr. HUBBARD. Before you leave the subject, I would like to ask you as to what points the Union Pacific has connection with through routes east?

Mr. LINCOLN. The Union Pacific has through routes to New York, and as an illustration, by way of Omaha, Nebr., Council Bluffs, Iowa,

via Grand Island and St. Joseph, Mo., over the St. Joseph and Grand Island Railroad, and via Kansas City, Mo.

Mr. HUBBARD. Does its percentage of the through rate differ according to one or the other of those eastern routes?

Mr. LINCOLN. It differs only as between the crossings at this time. I would say that as a general proposition.

Mr. HUBBARD. Are there any cases where any road has connection, we will say at its extreme terminus, and also has connection with an eastern route at an intermediate point, so that its percentage would be less if the shipment is diverted at the intermediate point?

Mr. LINCOLN. Yes, sir.

Mr. HUBBARD. In that case do you think the initial carrier ought, by the choice of the shipper, to be deprived of its long haul and greater rate?

Mr. LINCOLN. Yes; it establishes rates by its different gateways. If it does not desire to participate in the traffic through any gateway, it should not advertise itself to the public as carrying by that gateway.

Mr. HUBBARD. You have also stated that a carrier which originates freight of its own may insist that a connecting road shall apply to it a corresponding or agreed amount of freight in consideration of what it gives to that road.

Mr. LINCOLN. I can say that from practical experience. I have done that many times in my business.

Mr. HUBBARD. The legislation you propose would deprive the route of that power?

Mr. LINCOLN. I think it would; that is, it would give the shipper the right to route the freight, and it would deprive the road of that power of distributing its tonnage.

Mr. HUBBARD. Do the shippers desire that the railroads shall promptly return the cars, or that the connecting road, in lieu of returning cars promptly, shall exchange other cars for them?

Mr. LINCOLN. That is the general sentiment of the shippers, that there shall be free interchange of cars.

Mr. HUBBARD. Do they desire legislation for that purpose?

Mr. LINCOLN. I think generally the shippers would like to see legislation upon the question of roads being required, where they are participating in through business, to furnish equipment to run through; and that there should be provision for the connection returning that equipment to avoid embargoes that have existed at junction points in the past.

Mr. HUBBARD. Might there not be conflict between those two propositions, the originating road having made returns by which it is entitled to a certain number of cars or is sure that it will get cars promptly in exchange. Might not that be interfered with by an arrangement which would give the shipper control of the situation instead of the originating carrier?

Mr. LINCOLN. I think in the interchange of cars that the initial line should permit its car to go where it has advertised through rates. If it goes to a connection, that connection should be obligated on demand to return that car or a car to take its place.

Mr. HUBBARD. But suppose it knows that in fact it will get cars promptly in exchange from one line, but as a matter of fact will not from another. Would not that interfere with your other proposition, that the shipper should control the routing through?

Mr. LINCOLN. If that could be carried to a conclusion, and the one line could refrain from furnishing its equipment in participating traffic, it would have an influence upon the cars.

Mr. HUBBARD. Not merely would refrain, but possibly one line could not supply cars in exchange and another could. Would it be wise to give the shipper control of that situation?

Mr. LINCOLN. I believe it would. I think the best results will come from the shipper's control absolutely. I think it is going to help the car situation, and that is why the shipper wants to elect the route. He wants to be able to get his equipment, and to make use of those lines.

Mr. ESCH. If now there is agreement between carriers on joint routes for interchange of traffic, then we have practically a tonnage pool to-day?

Mr. LINCOLN. Under joint rates?

Mr. ESCH. No; where they agree to connect and carry a certain amount of freight originating on either line, giving an amount in return. Does not that practically amount to a tonnage pool?

Mr. LINCOLN. Wherever it is in force it is a tonnage pool, just as I have pointed out, absolutely.

Mr. TOWNSEND. And it is a fact that it does exist in places?

Mr. LINCOLN. I think it does exist; I know it has existed previous to three years ago. You understand that a new condition has arisen since the ruling of the Interstate Commerce Commission, and that the roads are incorporating it in their tariff, to the effect that routing beyond the initial carrier is reserved by the initial carrier. That condition did not previously exist, and while the shipper asked for a certain route the business was frequently diverted.

Mr. BARTLETT. Did not the Interstate Commerce Commission some years ago recommend that a road be permitted to make those arrangements? Did not the President in one of his messages sent to Congress, either this or the last session, suggest that they be permitted to have that power, subject to the approval of the Interstate Commerce Commission?

Mr. LINCOLN. If you want the declaration of the National Industrial Traffic League on that point, I have it.

Mr. BARTLETT. But I was referring to the President of the United States.

Mr. LINCOLN. We read the message from the President. The National Industrial Traffic League is absolutely opposed to a division of tonnage or pooling; absolutely.

Mr. BARTLETT. I understood you to say that virtually in many instances pooling exists between railroads to-day.

Mr. LINCOLN. It can exist under these rules, and the offering of tonnage to a connection no doubt exists to-day. I would not want to testify as to the fact, but I do know that certain roads reserve to themselves and are routing their business.

Mr. BARTLETT. The passage of a bill along the lines suggested by the President, subject to the approval of the Interstate Commerce Commission, would defeat the right of the shipper to select his route, would it not?

Mr. LINCOLN. I understood the President to say that in the formation of the association it did not contemplate either a division of traffic or a money pool, but the association could be formed for the

purpose of conference and for the purpose of considering joint rates. I have here the message of the President. [Reads:]

> In this connection I desire to repeat my recommendation that railways be permitted to form traffic associations for the purpose of conferring about and agreeing upon rates, regulations, and practices affecting interstate business in which the members of the association are mutually interested. This does not mean that they should be given the right to pool their earnings or their traffic. The law requires that rates shall be so adjusted as not to discriminate between individuals, localities, or different species of traffic. Ordinarily, rates by all competing lines must be the same. As applied to practical conditions, the railway operations of this country can not be conducted according to law without what is equivalent to conference and agreement. The articles under which such associations operate should be approved by the Commission; all their operations should be open to public inspection, and the rates, regulations, and practices upon which they agree should be subject to disapproval by the Commission.

He states there also that these associations should be subject to the supervision of the Interstate Commerce Commission. But we go further than the President in our declaration.

Mr. RYAN. As to this reciprocal agreement that you spoke of as between railroads now, it practically amounts to a pooling if it exists?

Mr. LINCOLN. Practically so.

Mr. ADAMSON. If there is a tacit understanding, a sort of mutual admiration, does it not amount to about the same thing as a regular agreement?

Mr. LINCOLN. I do not think so. I think it is absolutely necessary for individuals to get together for the purpose of discussing and fixing rates—that is, establishing uniform rates; every shipper objects to the rates between two points being different by different lines.

Mr. ADAMSON. But that is not what we are talking about. We are talking about the pooling practice.

Mr. LINCOLN. I think pooling should be absolutely prohibited.

Mr. ADAMSON. But I say if the railroads actually practice it tacitly without a regular agreement, is it not just as bad in its results?

Mr. LINCOLN. I think it may be just as bad if you carry it to conclusions, but in a great many cases they can not carry it to a conclusion. Take St. Louis, for instance; if a line declared itself there to the effect that it would not let the shipper route his business he would say, "All right, you will not get it," and he will go to another road. But if it is located at a local point he has no such opportunity to take his business to another road, and he has to comply with the requirements of that road. But, as I say, a big industrial concern that has a smart traffic manager, and most of them have, is not bound by obligations of that kind between competitive points, because they can take their business to somebody else, they having the benefit of competition, while the man at the local point has not.

Mr. LOVERING. Are you at all familiar with the handling of cotton?

Mr. LINCOLN. No; I could not speak intelligently upon that.

Mr. LOVERING. Do you know anything about the back-hauling of cotton; the great expense of it?

Mr. LINCOLN. There is a back-hauling of cotton in some cases.

Mr. LOVERING. The shipper may want to ship his cotton to New England and yet he can not do it. It may take a week or ten days, or some times a month longer, because they back-haul it to the compress.

Mr. LINCOLN. The theory, I will not say it is the absolute practice, is that the cotton should be taken to the nearest compress, and

usually the other theory is that it should be taken to the compress in line of transit to ultimate destination.

Mr. LOVERING. And the shipper has no say about that?

Mr. LINCOLN. I think he has a say about his route beyond that line.

Mr. LOVERING. I do not understand that he has; he is in the hands of the road.

Mr. LINCOLN. Reserving to himself the right of routing?

Mr. LOVERING. That road can take the cotton where it pleases, back-haul it or carry it forward.

Mr. LINCOLN. This bill would permit him to discriminate.

Mr. LOVERING. What is it under the present law?

Mr. LINCOLN. Under the present law it is being done, that is, to-day the railroads are reserving to themselves the routing of the business.

Mr. LOVERING. Would this bill prevent that practice?

Mr. LINCOLN. I think it would; yes, sir.

The next bill is H. R. 7568, which I think is the Fulton bill in the Senate. There are a number of other bills along the same line. I am of the impression that if I present on this subject, which has been discussed a great deal, the resolution of the National Industrial Traffic League it will go right to the point at issue. There may be some questions asked upon it, however.

Mr. KNOWLAND. Is this the bill that the Interstate Commerce Commission has reported against, or has sent a letter to the Senate Committee in opposition to?

Mr. LINCOLN. I do not understand that the Interstate Commerce Commission has reported against the bill. I understand that they have declared themselves against giving the shippers the right to protest a tariff, so that immediately the tariff will be suspended. But I understand the Commission are favorable to a measure which will give them discretionary powers in the event of the advance of the rate, and we are here to argue in favor of the granting of discretionary powers.

Mr. KNOWLAND. And has the bill been amended in the Senate to meet their objections?

Mr. LINCOLN. I do not know. I arrived yesterday morning, and it was my understanding that the bill was in subcommittee and being amended to conform with the sense of our resolution, but not the words, possibly. I will read the resolution, which is now on file with the committee. [Reads:]

Whereas the interstate-commerce act prohibits the carriers from engaging in transportation except under tariffs prepared, filed, and posted to the public in the manner prescribed and prohibits the carriers from charging, demanding, collecting, or receiving from any person for any service a greater or less or different compensation than that sum prescribed in such tariff; and

Whereas the Supreme Court of the United States has enunciated the principle that the courts did not have jurisdiction as to the reasonableness of a lawfully established rate which had not been condemned by the Commission, and, should the courts assume jurisdiction of such matters, and the Commission also, there would be conflict and chaos (Texas and Pacific Railway Company *v.* Cisco Oil Mill, 204 U. S., 449); and

Whereas many complications growing out of restraining orders issued by Federal courts in their various jurisdictions against rates and tariff regulations of the carriers proposed to be put into effect, orders in such cases being limited to the parties before it and to the territory under the jurisdiction of that court; and

Whereas the granting of such injunctions as to rates, rules, and regulations proposed to be put into effect creates, as between individuals and communities, the

very discriminations prohibited by the interstate-commerce act, the carriers being placed under the necessity of violating the act or disobeying the court's order; and

Whereas litigation harassing to both the carriers and the shippers could be avoided by placing additional power with the Interstate Commerce Commission as to rates, rules, or regulations proposed to be made effective; it is

Resolved, That the National Industrial Traffic League recommend that the interstate-commerce act be amended so as to provide that when an advance in a rate or a change in any regulation or practice, which effects an increase in its charge, has been filed and is attacked by complaint to the Interstate Commerce Commission, the Interstate Commerce Commission shall have power, in its discretion, to prohibit the taking effect of the advance or change until the matter has been finally heard and determined.

I am not very good on making suggestions as to amendments, but the sense of it, as to our proposition, is this: It is recommended that this bill (H. R. 7568), be amended by striking out, on page 1, lines 10 and 11, and on page 2, lines 1 to 9, inclusive, and substituting therefor: "Whenever the notice of an advance in a rate or a change in any regulation or practice, which effects an increase in its charge, has been filed and is attacked by complaint to the Interstate Commerce Commission, the Interstate Commerce Commission shall have the power, in its discretion, to prohibit the taking effect of the advance or change until the matter has been finally heard and determined." I notice that you gentlemen smile because, I suppose, you see I have taken out the whole bill. You will remember that I remarked I was not an expert on this line, although this is a bill I can address myself to.

Mr. TOWNSEND. I am used to that.

Mr. LOVERING. There is one other important point left out of it, in my judgment. The rate may not be changed, but there may be consequent delay by a change of practice of that sort which may resolve itself into an element of cost.

Mr. LINCOLN. We tried to cover that by using the words "by advance or change."

Mr. HUBBARD. Which will affect the rate.

Mr. RYAN. It might be made to read "regulation or practice which affects any increase in the charge."

Mr. LOVERING. You may not increase the charge, and yet at the same time you may imperil the rate—subject it to some other hazard.

Mr. LOVERING. I would suggest that the words "or delays in transportation of that freight to the injury of that person" be inserted.

Mr. LINCOLN. But that comes more under the head of instrumentalities than the question that is before the public as to the rate change. That is what the public is dealing with now, rather than the instrumentalities.

Mr. LOVERING. You might route by the longer route.

Mr. LINCOLN. I think that would come under the head of instrumentalities.

The CHAIRMAN. What would be the meaning of the word "practice" as you use it there?

Mr. LINCOLN. The word "practice" is the road's giving a notice, for example, of the discontinuance of a "milling in transit" privilege, the practice of modifying, as in the recent case I have in mind, of "milling in transit" privilege that had heretofore been enjoyed by attaching a charge for that service. That is in the Arkansas case, an injunction being given in favor of Mr. T. H. Bunch, preventing the Rock Island road from making a certain advance and continuing an

old adjustment. Under that injunction the people in other localities were affected who, however, could not receive the benefit of the injunction because they were not located within the court's jurisdiction, and they were not before the court. I think it is confirmed by the instructions that the railroads do give in the "case of lumber rates from the Northwest," where certain shippers are paying the advanced rates and other shippers are paying the old (lower) rate. Those shippers who appeared before the Federal court have the protection of the court, having given bond, but those shippers who have not are not under the court's jurisdiction, are paying the advanced rate, and can not recover except by further litigation. In fact the roads in that case have issued instructions as to what shipments shall be settled upon the old rate and what shall be settled upon the new.

Mr. BARTLETT. And the court is now adjusting the damages and making the road pay all that back.

Mr. LINCOLN. I had another case in mind, a personal experience, in which I felt that justice has been delayed for over a year; as the result of negotiations with the Iron Mountain Company I secured a readjustment of our rates on grain from St. Louis to Arkansas points, such as Little Rock, for example, granted in February, 1907. In March, 1907, we received notice of proposed advance. The notice was in effect, but the tariff had not become effective. I could not, under my understanding of the interstate-commerce act, get any relief from the Commission against the proposed rate, but would have to wait until that rate went into effect and became a practice of the road; then I could make complaint to the Commission, and after due hearing of all parties in interest I would get a decision. So I applied to the Federal court of St. Louis—it was an equity case—for an injunction against the proposed advance. The Federal court declined to take jurisdiction, so that the advanced rate went into effect. I appreciate that under the law one may get reparation. These were grain rates, and I think that any grain man who ships grain on the basis of a rate he may think he ultimately can get reparation on would have to retire from the business because he could not take chances on getting the reparation. We carried the case to the Interstate Commerce Commission, it being filed in August. I opened further negotiations with the road to see if we could avoid carrying the case further, it not being our desire to get into court, but nothing came of it. We filed our case, as I say, in August, we had a hearing, and the Interstate Commerce Commission gave me a verdict in December, which was practically along the lines of the same rate that we had secured in the previous February. In the meantime there had been a general advance of rates, but relatively the order of the Commission in our favor was the same as the adjustment which I tried to enjoin.

Mr. TOWNSEND. But you got reparation.

Mr. LINCOLN. I had nothing to get reparation on, because we did not do any business. We asked for a readjustment of rates, but we did not seek reparation because we did not do any business. There was a motion for a rehearing in that case, which was heard in February, but the Commission denied the motion for a rehearing and reaffirmed its orders in our favor. This is now March, and those new rates ordered by the Commission go into effect in April. The Federal court, in denying the injunction, prevented the readjustment of the rates for a year, to which I think we were entitled in

the first place; if we had the right to go to the Commission in the first case and ask that the proposed advance be suspended until they could hear the case, nobody could be hurt. If the Federal court at St. Louis had enjoined the road, it might have created discrimination as between other individuals, because I presume the rate could only be adjusted as to that court's jurisdiction.

Mr. TOWNSEND. Has your attorney looked over the amendment you propose?

Mr. LINCOLN. No; he has not; we have no attorney.

Mr. TOWNSEND. As to whether under the wording of this amendment as it is given here there is any obligation resting upon the Commission to hear and determine these complaints.

Mr. LINCOLN. My idea was this: You are raising some legal points, but I can tell you my idea of the resolution, that it be the duty of the Commission to hear and determine these complaints; and if a complaint were made, they would have the authority, in their discretion, to suspend the rate, my idea being that there must be an order for each case, just the same as an injunction.

CONCERNING FREIGHT RATES.

WEDNESDAY, *March 11, 1908.*

Committee called to order at 10.30 a. m., Hon. W. P. Hepburn in the chair.

RECOVERY OF VALUE OF UNLAWFUL REBATES.

STATEMENT OF HON. RICHARD WAYNE PARKER, OF NEW JERSEY.

[H. R. 4006.]

Mr. PARKER. I would like to distribute to each member of the committee a short brief of this bill contained on one page, together with the arguments. As I have been given only ten minutes, I shall not read the bill, but will state it.

Since the year 1900 I have been convinced in the Committee on the Judiciary that the remedies for unjust and unlawful discriminations were to be found in recovery of the value thereof from the person who received the benefit of the discrimination; and by unlawful discrimination I do not mean on railroads alone, and I do not mean rebates from published rates. The rates themselves as adjusted may be unfair between one town and the next town, may be unfair as between one man's siding and another man's siding, and at present the only remedy all over the United States is for everybody to come to one single court in Washington, which court gets at the facts with difficulty and can only determine them with difficulty. Besides, it is a commission and not a court, and the decision is not final, but subject to appeal to the court.

My proposition was that if Mr. A in the town of A, if you please, was charged a rate which he thought was not right compared with B in another town, if B was getting unlawful discrimination A should have the right to call upon the Government to bring a suit

against B, if the Attorney-General thought proper, for the advantage which B had unlawfully received by reason of the lower rate. There is no allegation of its being willful, there is no forfeiture whatever, but simply an action against B to make him return the value of the unlawful advantage obtained.

Mr. ESCH. It is really a moiety act.

Mr. PARKER. But only in another section. Under the first section the action is brought by the Attorney-General, and it all goes to the Government. Under the third section he could act as informer; that is, he could ask the court for leave to bring the action, and the court could, if it thought proper, order him to bring the action, and thus decide as a matter of law whether those rates were equal between those people and those two places or not. On the trial the defendant would be likely to produce all the evidence, but there is no charge against his morals. He would simply say that his switch gives such an advantage, and he is therefore entitled to a lower rate, or that his having been furnished with cars gives such an advantage that he is entitled to a lower rate—there would be fifty things, as you know, that could determine the question of rates, competitive business, or whatever it may be. That would be brought out at the trial, a fair trial between the two.

Now, if it be determined upon that trial that an unjust rate has been made and that the man has received an advantage then that matter is settled, and if he goes on, in spite of that determination, receiving such advantage he then becomes amenable to the second section, which allows the recovery of both the value of the advantage he has received and forfeiture; but instead of being in the trouble that is usually had by suit for forfeiture you would have a decision which would determine the point.

Mr. TOWNSEND. Do I understand you to say that that is a suit of one shipper against another shipper?

Mr. PARKER. No; it is a suit of the United States against the shipper to recover the value of the unlawful advantage, which suit can be brought under the third section by an informer by leave of the court, and with no power of the informer to settle without leave of the court.

Mr. TOWNSEND. In any court?

Mr. PARKER. In United States courts only.

Mr. ESCH. This is purely a cumulative advantage.

Mr. PARKER. That was put in by the committee that it should not offset any other remedies that now exist under the railroad laws or otherwise.

Mr. TOWNSEND. By what committee?

Mr. PARKER. By the Committee on the Judiciary, who reported it.

Mr. ESCH. It was considered last year?

Mr. PARKER. Considered by the committee, passed by the House, and the debate upon which it was passed, which explains the whole bill, is contained in this matter that I have placed before you. It went to the Senate, and in the Senate it was favorably considered by the members of the Judiciary Committee, I think I may say without breach of confidence, and Senator Spooner and others were exceedingly interested in it; but the result, however, was that when the railroad rate bill came out Mr. McCumber thought that whenever there was a rebate made upon established rates that triple the value

of that rate should be recovered by the Government, and he tacked that on the railroad rate bill. It is only applicable as to railroad rates.

In the next place, it states what you have had before with reference to forfeiture actions which are governed by all the rules likely to set aside forfeiture actions and such recoveries. The proposition that this bill makes is that as to all interstate commerce, whether by water or express or by railroads or canals or any mode of communication that there may be, if there be unjust or unlawful discrimination under the interstate-commerce law which was originally passed and which applies to all such interstate commerce, that then an action can be brought in the courts to determine whether the rates be or be not fair or equal. Of course if it is a rebate from a published rate it is an unjust discrimination, and liable to forfeiture of double the value under the second section of the bill. If it be an unjust rate in the published rates on any business which is not subject to published rates, and if it be an unjust and unfair discrimination between shippers of any kind, the court can treat the action and determine it, and no injury is done to the man who received the unfair rate because he only returns the exact value of the discrimination which he ought not to have received.

Mr. TOWNSEND. The only new thing, practically, that you present in that, because the shipper has a right now to go into court under the law and sue for damages, is the penalty which you impose?

Mr. PARKER. The shippers do not amount to anything. I mean to say by that that if a man is a small shipper of oil, we will say, and he is ruined by the advantages received by a great oil company, they get their millions while he is only damaged $10,000 or $15,000, and for that he could recover damages. He would allow suit to be brought against the company for the value of the discrimination which they may have received and which may run into the millions. He would allow the suit to be brought by an informer only with the leave of the court, and I do not allow that suit to be settled without leave of the court, because after the facts have been determined the court may say that it is a suit that ought to be prosecuted and one which the district attorney ought to take care of.

Mr. MANN. The court would invariably grant leave, would he not?

Mr. PARKER. They might not grant leave to settle it. We will say that the company has received a million dollars by reason of discrimination, and a man comes in who is a friend of theirs and gets leave to bring an information suit. When he gets started in the suit, that being the only one, that must be brought. But under this bill it is under the control of the court that that suit can not be discontinued without leave; that is, that you have a control over those suits, and it will prevent their being settled in that way.

Mr. MANN. It would be quite a tidy sum for anyone who has the opportunity to bring such a suit against a company like the Standard Oil Company if it should lead to a man's receiving half of the $29,000,000 fine.

The CHAIRMAN. Might there not be two suits pending at the same time in the jurisdiction of two courts?

Mr. PARKER. I should think not, because the suit is brought by the Attorney-General of the United States; only by him or by leave of the court in his name, or by an informer by notice to him.

Mr. CUSHMAN. You use the language "established and published rates."

Mr. PARKER. That is in a brief that I have filed here. I say that the McCumber amendment in the Senate only covers rebates from published rates, whereas this bill covers not only rebates from the applied rates, but all unlawful and unjust discriminations which are alleged to be so, leaving it to the court instead of the Commission to determine whether unjust or not.

Mr. MANN. You contend that the making of a rebate is criminal and subject to a penalty?

Mr. PARKER. That it is criminal.

Mr. MANN. How many times can we punish a man for performing a criminal offense?

Mr. PARKER. I do not think punishment of a man for thieving prevents the recovery of the value of the stolen goods.

Mr. MANN. Then you think that you can have the individual sue for the value of the goods and imprison a man for the theft, and in another proceeding fine him besides?

Mr. PARKER. No; wait a moment——

Mr. MANN. That is what you do here. You say "that this act shall be cumulative of all other laws."

Mr. PARKER. I wish you to strike out that fourth section, because I do not think it is a good one. It was put in against my consent by the Judiciary Committee.

Mr. MANN. Anyone can see that that is unconstitutional, and I am inclined to think that the rest of it is also.

Mr. PARKER. No; the rest of it is not unconstitutional. It can not be unconstitutional for a man to be asked to return the value of that which he has received wrongfully.

Mr. MANN. But the law now provides that that may be punished; and in addition to that, under this bill, he shall be asked to return the value, and then you propose under this cumulative section that he shall be punished again.

Mr. PARKER. No; not punished again. I say strike out that fourth section. That is not my section, and I put it in simply because it was forced upon me.

Mr. MANN. Then you propose that this punishment shall take the place of the present punishment. Is that it?

Mr. PARKER. No; I do not.

Mr. MANN. Will it then be cumulative?

Mr. PARKER. I do not consider that it is any punishment to make a man return what is wrongfully received. The first section is not punishment at all.

Mr. MANN. There is nothing in here about returning what is wrongfully received.

Mr. PARKER. But the first section of the bill says that the United States may sue for recovery of the value of any benefit or advantage received through any unlawful rebate, concession, preference, gratuity, or discrimination.

Mr. MANN. That is a punishment.

Mr. PARKER. But wait a moment and let me explain——

Mr. MANN. It is not a rebate received from the United States, it is not money owing to the United States, and the only way the United States can get it is to take it by punishment and penalty.

Mr. PARKER. It is money that belongs to the railroads——

Mr. MANN. You propose to have the Government get it by penalty, and how can you penalize a man in that way and also imprison him.

Mr. PARKER. I do not think unlawful discriminations are penalized; I think you are wrong.

Mr. MANN. But if you will consult the statutes——

Mr. PARKER. I have been through the statutes, and any rebate from a published rate of any kind, sort, or description is penalized, but if the rates themselves are unfair it is not penalized at all. That is a matter of judgment. It is made unlawful, but there is no penalizing. That has been done, and what I wanted is to enable the courts and Interstate Commerce Commission to have some power to determine in the first instance——

Mr. MANN. In other words, if the man complies with the published rate, you want the Government to sue him because he pays the published rate?

Mr. PARKER. No; I want to have a court to be able to determine whether the rates are fair and equal or not.

Mr. MANN. Regardless of whether they are published rates or not?

Mr. PARKER. Yes. I do not believe in the rule of the Commission and never did. I am frank to say that I think the Commission's rulings are valuable, but they can not be final, and they have to go to court in the end.

Mr. SHERMAN. Then what is the reason for having published rates at all?

Mr. PARKER. The publication is always useful just as the record of the deed, but the validity of the deed does not depend upon its record. It is simply notice to everybody. There are a great many transportation companies who do not publish rates. Only railroads do, and the publication by the railroads is to enable the facts to be gotten as to what is being charged. But if the railroads, under those published rates, are giving advantages to one man as against another, there should be something done about it, and the rates ought to be set aside by the Interstate Commerce Commission——

Mr. SHERMAN. Which is a quasi court.

Mr. PARKER. This proposition says, that if there has been a rate that has given an unfair advantage to one man, that unfair advantage should be returned, not to the railroads, but returned to the Government. It does not belong in the railroad's pocket, but it does belong in the hands of the public.

Mr. TOWNSEND. But I remind you that the Commission has held in several instances that where a rate was unjust, reparation should be made to the shipper. You have this remedy at the present time before the Commission, but you admit that a man does not have to abide by that, and that he can then go into the court because the Interstate Commerce Commission does not preclude the possibility of that.

Mr. PARKER. But again we are getting to the question of damage to the man. Under the old interstate commerce laws suit was allowed for whatever damages he has received in the amount, but this is not for the damage received, but a return for the advantage unjustly given to the other man. Under the McCumber amendment to the railroad rate bill you are allowed to sue for three times the value.

Mr. TOWNSEND. Will you expect to get bigger damages and greater punishment than was imposed by Judge Landis upon the Standard Oil Company?

Mr. PARKER. No; I expect to get less, but more certainly.

Mr. BARTLETT. You said "recovery." What do you do with this recovery? Is it recovery to the individual; does he pay one-half to the informer and the other half to the Government?

Mr. PARKER. No, sir.

Mr. BARTLETT. That is not recovery to the amount of the injury by the payment of the excess rebate?

Mr. PARKER. No, sir; it is not.

Mr. BARTLETT. Then, this is a quasi criminal action, is it not?

Mr. PARKER. It is a suit to enforce equality between shippers on railroads.

Mr. BARTLETT. A quasi criminal action.

Mr. PARKER. Not if brought by the United States under the first section.

Mr. BARTLETT. If he sues through the informer?

Mr. PARKER. Not necessarily, when by leave of the court, under the third section, the suit can be brought directly by the Attorney-General.

Mr. BARTLETT. The section imposes a penalty?

Mr. PARKER. Under the first section—it is not a penalty, because it equalizes things, enforces equality; it makes a man who has received an unjust advantage give it up?

Mr. SHERMAN. To whom?

Mr. PARKER. It does not make any difference, but he gives it up to the Government.

Mr. MANN. Here are two competitors in two different towns. One persuades the railroad company to make a low rate from his town, and has it published. Then he ships goods under that published rate, which is discriminatory in his favor. Under this bill could the Government or the informer prosecute a suit to recover double the value of the discrimination?

Mr. PARKER. That is just the case I want to hit. The man disputes that it is a fair rate. The Government can bring a suit against him for the value of what he has received; no forfeiture at all excepting the value of the unjust benefit received.

Mr. MANN. It says "double the value of such benefit."

Mr. PARKER. Is that the first section?

Mr. MANN. I am reading from the second section.

Mr. PARKER. There are four remedies; the first is for the Government to sue for the value under the first section, and under those circumstances the matter could be finally brought to——

Mr. MANN. Could the Government prosecute for double the value?

Mr. PARKER. They could, but they would be foolish to do that in the first instance until the unfairness of the rate has been determined by the action of the court. The suit under the first section, not being under any willfulness or criminal intent, could be tried like any other civil action, and the verdict of the jury would determine whether it was a fair rate or not. When once determined, if they brought another suit for the rebate advantage, they would bring it under the second section. Under the third section if the Government did not want to bring the action, and the man thought it ought to be

tried, he would give notice to the Attorney-General, and application under the third section would be made for leave to bring the suit in the name of the Attorney-General. The court would determine whether the third party should be allowed to bring it, and when once brought, the party would not be allowed to settle without leave of the court.

Mr. MANN. In other words, as I understand it, instead of compelling the competitor of a man receiving the discrimination to go to the Interstate Commerce Commission and complain, he might go into court and have the question tried as to whether these rates were right or not, regardless of whether they had been published rates.

Mr. PARKER. That is what I want to get at.

Mr. KENNEDY. Do you give a jury the right to determine that?

Mr. PARKER. Under the power of the court to set it aside. You have got to go to court in the end from appeals from the Interstate Commerce Commission. I am of the opinion that there is too much business before the Interstate Commerce Commission to get anything done, that it is outgrowing the ability of any central court to do. Before you get through you have to go to the old courts of the United States, and that is the principle under which this bill operates.

Mr. KENNEDY. The courts have held repeatedly that the fixing of a rate is a legislative act. Do you think that a court could fix a rate?

Mr. PARKER. The court can where there has been gross discrimination or unjust discrimination practiced under the act which already exists.

Mr. BARTLETT. You may sue on one of these sections and get judgement either for the plaintiff or the defendant, and then you could then sue on the second or third section, or would judgment on one of these sections be a bar to another suit.

Mr. PARKER. It would be a bar as far as it has gone, as to all actions up to that time, and the decision might probably settle the question as to the righteousness of the rate unless the circumstances have changed thereafter.

STATEMENT OF HON. MARTIN D. FOSTER, A REPRESENTATIVE FROM THE STATE OF ILLINOIS.

Mr. FOSTER. Mr. Chairman and gentlemen of the committee, the bill that I desire to call your attention to is H. R. 11732. In brief, this is a bill to make the interstate rates not greater than the sum total of the local rates. For instance, Illinois, Indiana, Missouri, and Ohio, and those States out there, some of them, have a 2-cent passenger rate. In traveling from Illinois into Indiana the railroads charge 3 cents per mile for a ticket, and unless we stop at a border town and get off and buy another ticket to the next border town, and in that way arrive at the destination, we are obliged to pay the 3-cent rate, which we feel is an injustice. Also in the matter of freight rates; for instance, in shipping hay from Noble, Ill., 68 miles west of Olney, on the Baltimore and Ohio, to Evansville, Ind., the rate through to Evansville is greater than it would be to ship this hay to Olney, paying the local rate from the town of Noble, and then reship to Evansville from Olney. If they were permitted to do so, they could save 1¼ cents, I think, per hundred pounds on that sort of a shipment.

This bill is intended to remedy what we think is an injustice upon the shippers and upon those who buy tickets. It is to make the interstate commerce rate not greater than the sum of these local rates. For instance, if Illinois has a 2-cent-fare rate and Indiana a 3-cent-fare rate, it does not affect the rate in Indiana, and only permits the roads to charge the amount of 2 cents in Illinois and 3 cents so far as they go in Indiana, making the interstate rates the sum of these local rates. Or if they have a 2-cent rate in Indiana, which they have now, they shall not be permitted to charge for interstate freight more than the sum total of these local rates. This bill provides that the interstate law shall remedy what we think are defects.

Mr. KENNEDY. Does not the Interstate Commerce Commission have the power to do so now?

Mr. FOSTER. They have not. We had a case up there that I took up before the Interstate Commerce Commission. I am not a lawyer, but in taking this case up, this freight rate on hay, there was a large shipment of hay from this little town of Noble to Evansville, Ind., by way of Olney, where it goes over the Baltimore and Ohio and the Illinois Central, and they said they could not change the rate.

Mr. TOWNSEND. Why?

Mr. FOSTER. They said under this law they had not the power to do that.

Mr. TOWNSEND. How was the complaint made?

Mr. FOSTER. I do not know that it was formally made, but it was taken up to the Interstate Commerce Commission.

Mr. TOWNSEND. You have no question about the Commission having power to determine the reasonableness of a rate between two points, and of course no one contends that the Commission would have a right to say that because the two locals are lower than the rate charged, therefore one should be made equal to the other. But the Commission has the power to determine the reasonableness.

Mr. FOSTER. I understand that, but they have the right to make the interstate-commerce rate not greater than the sum total of the local rates.

Mr. STEVENS. Have they not gone to the extent of doing that? What you want exactly is the prima facie reasonable rate that is the sum of the local rates.

Mr. KENNEDY. Under an opinion of the Commission, if a 2-cent rate in Indiana was right, and there was a 3-cent rate across the line, it would seem to me to be an easy question to decide what is the reasonable rate. They have the power to fix it.

Mr. FOSTER. They claim that they have no power to change that, but they have under the law to make an interstate rate which is greater than the total of the local rate.

Mr. BARTLETT. But the Commission did the very thing that you say they ought to be permitted to do in the case read before this committee known as the Texarkana case relative to the Arkansas rate and the Texas rate upon cotton seed, where it appeared that the two rates of the States put together was a certain amount which was much less than the other, and they said that they presumed that the two State rates were reasonable, and nothing else appearing to show that they were not reasonable they accepted them as reasonable rates and required the railroad to lower the rate to the sum of the State rates.

Mr. STEVENS. Here is the language from one of the decisions of the Interstate Commerce Commission on this very point. It may be well to have it in the record, and I will read it so that the members can understand what the Commission has already ruled upon that point:

Through rates frequently equal the sum of locals charged to and from an intermediate locality, and in the South most rates to or from interior noncompetitive points are made by taking the rate to or from a competitive point and adding the local between the latter and the noncompetitive station; but it seldom, if ever, happens that the through rate from an interior noncompetitive point is made to exceed the sum of the rates to and from any intermediate locality, however strong and controlling the competition at such intermediate point may be. Through rates higher than combinations of local charges are extremely rare in railroad transportation, and those which have been brought to our attention have only been approved when occasioned by extraordinary and peculiar circumstances. They have not been justified in any case by the fact of water or other competition at points of junction between the connecting roads. (Hilton Lumber Co. *v.* Wilmington & W. R. R. Co. et al., Interstate Commerce Rep., 9, 28.)

Mr. BARTLETT. In addition to that probably this would be interesting to the committee. They have promulgated these regulations and this is what they say about it [reads]:

Many informal complaints are received in connection with regularly established through rates which are in excess of the sum of the locals between the same points. The Commission has no authority to change or fix a rate except after full hearing upon formal complaint. It is believed to be proper for the Commission to say that if called upon to formally pass upon a case of this nature it would be its policy to consider the through rate which is higher than the sum of the locals between the same points as prima facie unreasonable, and that the burden of proof would be upon the carrier to defend such higher through rate.

So that they have the power.

Mr. FOSTER. The great difficulty with that is, as I see it, that if an individual case has to be taken up, and it is shown that the rate is excessive——

Mr. KNOWLAND. Are there many of those instances?

Mr. FOSTER. Yes.

Mr. STEVENS. The Commission says not.

Mr. FOSTER. We found a great many of them, as I understood it, from the shippers.

Mr. TOWNSEND. Can you conceive of a case where the two locals might at least be temporarily unreasonable?

Mr. FOSTER. Yes; I think that that is possible.

Mr. TOWNSEND. Do you want still to insist upon the rule without a hearing?

Mr. FOSTER. I think the courts would have a right to determine that matter.

Mr. TOWNSEND. But not if you made it mandatory to fix the rate.

Mr. FOSTER. I should think they would have a right to go into court and show an unreasonably low rate. They have under this bill, have they not?

Mr. TOWNSEND. You propose to nullify that part and say that they must fix the rate.

Mr. FOSTER. They have the same right under this bill to show that it is an unreasonably low rate; if the State fixes an unreasonably low rate, they have a right to show that.

Mr. TOWNSEND. That is, you contend that the States have a right to appeal?

Mr. FOSTER. The individual shipper in many cases can not go into court—the small shipper. You will notice that in most of the States

where they have railroad commissions they signify their willingness and intention to conform to the interstate-commerce law; it is their intention to do it, but I have thought that it was right that the National Government should try to work in harmony and unison with those States.

Mr. STEVENS. The States have not attempted to conform to anything in passing their passenger-rate laws.

Mr. FOSTER. They could not go beyond the States, and they passed rates that they thought were just.

Mr. STEVENS. They have a right to, but that does not bind the Federal Government.

Mr. FOSTER. No, sir; not necessarily, but if it is determined that it is a reasonable rate, then I believe that there ought to be harmony between the States and the National Government.

Mr. STEVENS. Would you have harmony by the States controlling matters and the Federal Government trailing after?

Mr. FOSTER. No; I think under the law that the Government should be permitted to show that interstate rates are just. If it can be shown that they can carry passengers at a profit for 2 cents a mile in Illinois, and that the same conditions exist in Indiana and Missouri, they ought not to be permitted to charge 3 cents a mile when a passenger travels from one State to another.

Mr. STEVENS. But your bill does not allow that.

Mr. FOSTER. I ask that they have the same rate. This is simply an amendment for the interstate-commerce act, and the general provisions of the interstate-commerce act would apply to this amendment as is does to other amendments.

Mr. STEVENS. Your bill takes it out of the power of the Interstate Commerce Commission and practically puts it in the power of the State to determine what the rates shall be.

Mr. FOSTER. It simply provides that the interstate rates shall not be greater than the sum total of the local rates. It is a great annoyance to us. We feel it and the shippers feel it in that territory.

Mr. HUBBARD. Under the policy which the Interstate Commerce Commission has declared and which is known, the reasonable through rate would be the sum of the local rates. Do you anticipate in the future much more trouble?

Mr. FOSTER. I could not say as to that, but it seems to me that in fixing any rate that same question would come up again.

Mr. HUBBARD. Would not the railroads accommodate themselves to this declared view of the Interstate Commerce Commission, and declared more than once as its policy?

Mr. FOSTER. I doubt very much if they would. My judgment is that they would not. If they go ahead and fix rates under the interstate-commerce act, they should be held, at least, as reasonable by the courts as well as by the Commission.

LONG AND SHORT HAUL.

[H. R. 4801.]

Mr. HARDY. There is a gentleman here from Lincoln, Nebr., who has come all the way from his home town in order to make a talk upon this bill of mine, and I would like to ask the committee to hear him first. I will now introduce Mr. Whitten.

STATEMENT OF MR. WHITTEN, OF LINCOLN, NEBR.

Mr. WHITTEN. Mr. Chairman and gentlemen, I appreciate the honor to be privileged to appear before this Committee on Interstate and Foreign Commerce, one of the most important of all Congressional committees. What remarks I have to make have reference to a bill introduced in the House of Representatives by the Hon. Rufus Hardy, of Texas, and known as H. R. 4801, entitled "To prohibit railroad companies from charging a greater freight rate for transportation for short distances than for longer distances and for the same commodities and class of freight in the same quantities."

The object of the act to regulate commerce was to eradicate the then existing system of rebates and unjust discriminations in favor of particular localities, special enterprises, and favored individuals. That these various clauses were openly violated by transportation companies for a long period of years is only too well known to your committee and were continued without interruption until the passage of the Hepburn bill, June 29, 1906. The enactment into law of the Hepburn bill resulted in eliminating the pernicious system of rebates or the discrimination between special enterprises and favored individuals, but in my opinion it did not go far enough. I believe it should have amended section 4 of the act to regulate commerce by striking out the words "under substantially similar circumstances and conditions," and amended same further by striking out all of said section 4 beginning with the words "*Provided, however:*" [That upon application to the Commission appointed under the provision of this act, such common carrier may, in special cases, after investigation by the Commission, be authorized to charge less for longer than for shorter distances for the transportation of passengers or property; and the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this (fourth) section of this act]. Said section 4 then should be amended to read as follows:

"That it shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater compensation for the transportation of passengers or like kinds of property for a shorter than for a longer distance over the same line in the same direction, the shorter being principally included within the longer distance; but this shall not be construed as authorizing any common carrier within the terms of this act to charge or receive as great compensation for a shorter than a longer distance."

This fundamental principle of the act to regulate commerce, i. e., section 4, has practically been nullified by decisions rendered by the United States Supreme Court and the authority vested in the Interstate Commerce Commission with respect to this section made inoperative.

The privilege thus given transportation companies to ignore the long and short haul clause at their pleasure results in greater discriminations between localities than resulted from the system of rebates, and that it is interfering with the progress and development of jobbing and manufacturing industries throughout the States lying south of the Ohio River and west of the Missouri River is evidenced on every hand. It would not be fair to say that the interior towns in the territory just mentioned have not prospered during these last six

or seven years of phenomenal business, but it is a fact, nevertheless, that the growth of the interior jobbing and manufacturing towns has not been in proportion with the development of cities and towns especially favored by transportation companies. Permit me to cite as direct evidence the effect discriminating rates have had upon my own city—Lincoln, Nebr. It is one of the last things that I like to do, to call attention to some things in respect to which we have not prospered, but still I feel that I should do it.

Nebraska as you know is strictly an agricultural and live stock producing State, taking rank with Illinois, Iowa, and Kansas in this respect. In 1888 Lincoln had a number of packing houses. We have not one to-day. The railroads made more favorable rates on coal and on salt from the Kansas mines to Omaha than they gave Lincoln, although the distance from the coal mines to Lincoln was a few miles less than to Omaha, and the distance to Lincoln, a directly intermediate point, is 55 miles nearer the salt producing territory of Kansas than is Omaha, and our freight rates on these commodities are 15 cents per ton on coal and 60 cents per ton on salt higher than the rates to Omaha. Our rates on live stock from points 100 miles beyond Lincoln are the same that obtain on shipments to Omaha, and from South Platte territory they are in favor of St. Joseph.

Twenty years ago we had a wholesale dry goods house in Lincoln. The "midnight" rates made for the benefit of the Missouri River jobber put our house out of business. To-day Omaha has 2, St. Joseph 4, and Kansas City as many more large wholesale dry goods houses. Twenty years ago we had 4 wholesale groceries, and to-day we have not one more and the men at the head of these jobbing concerns are taxed to their utmost to compete favorably in territory west of Lincoln with the prices made by their competitors located farther East. As an example permit me to cite a case brought to my attention only recently by one of these wholesale grocery houses. They bought a car of manila rope at San Francisco. The consignees were called upon to pay a rate of 72 cents per 100 pounds—arrived at by adding to the rate of 60 cents per hundredweight from San Francisco to Council Bluffs, the local rate of 12 cents back from Council Bluffs to Lincoln. The railroad charged for a haul of 118 miles which it did not perform, and collected bridge toll east bound and west bound over the Missouri River Bridge and the shipment never was nearer the Missouri River than Lincoln—55 miles away. The rate on the same shipment to Chicago—555 miles east of Lincoln—would have been but 60 cents or the same rate that applied to the Missouri River.

Another case: When I went to Lincoln in February, 1906, the rate on tea from China and Japan cleared through Pacific coast ports was 30 cents per 100 pounds, amounting to $72 per minimum carload in excess of the rate on the same commodity from the same foreign ports to Omaha. The unreasonableness of this adjustment as between Lincoln and Omaha was brought to the attention of Lincoln lines participating in the traffic, and after many months, through a trade made between the general freight agent of a Lincoln-Nebraska railway with a freight official of a Texas line whereby the former agreed to vote to admit certain Texas points to be included as "overland common points" if the Texas railway man would vote to include Lincoln,

the reduction in rate was brought about, and the "fabric" of rate making was preserved.

Eastbound transcontinental rates to points in Nebraska, Kansas, etc., are higher than the rates to the Missouri River. As a general proposition, rates to points west of the river are based on the rate from Pacific coast terminals to the Missouri River plus the local rate back, observing what is termed as "intermediate-point rates" as maximum; for instance, the first-class rate from Pacific coast terminals to Omaha is $3 per 100 pounds, to Lincoln $3.30, to Grand Island, Nebr., 100 miles farther west than Lincoln, or that much nearer the point of origin the rate is $3.50. Beginning at the Missouri River and extending to the Atlantic coast the territory is divided into zones or certain prescribed territories or zones and the long and short haul clause is recognized, but why the same application of the rule should not be applicable to the territory west of the Missouri River is something not understood, and it is legislation such as proposed by Mr. Hardy that is intended to correct this evil. On west-bound transcontinental business the Missouri River rates obtain as maximum rates from points in Nebraska Kansas, etc., and this basis has been in effect for a number of years.

If the principle is sound, then the rule should be enforced on east bound traffic, and further than that, inasmuch as the long-and-short-haul clause is made operative voluntarily by the railroad lines in territory east of the Missouri River, it would appear that some legislation might very consistently be suggested that would result in the railroads recognizing the same rule west of the Missouri River on eastbound transcontinental traffic—so much for overland rates. But these are not the rates that do the greatest injustice to the interior western and southern towns. I doubt if you can find a city in the West or South that is not artificially called a basing point that is not discriminated against by transportation lines through making so-called "terminal rates" to some favored point or points, and by their failure to apply such terminal rates as maximum rates to directly intermediate points.

To indicate to you how the railroads manipulate the applying of terminal rates, thereby favoring one community as against another, I wish to present just one of many instances that have come to my notice. The Rock Island Railway has a rail-fence line between Kansas City, Leavenworth, and Omaha. It starts out of Kansas City in a northeasterly direction to a junction called Edgerton, Mo., about 20 miles east of the Missouri River; from that point it runs in a northwesterly direction to Fairbury, Nebr., crossing the Missouri River at St. Joseph, and from Fairbury the course is again northeasterly through Lincoln to Omaha. Their tariff covering rates between Kansas City and Omaha provides that the terminal rates named therein will apply as maximum rates to directly intermediate points in Missouri, but will not govern as maximum rates to points on the direct through line located in Kansas and Nebraska. One could go on indefinitely citing similar breaches of the spirit as well as the letter of the act to regulate commerce.

That the leading commercial organizations and traffic managers of large industrial properties located in the West and South recognize the necessity of enforcing the long and short haul clause is shown by the following resolution, taken from the proceedings of a meeting held in Chicago August 29, 1907:

THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE.

Proceedings of meeting of the National Industrial Traffic League, held in Chicago, at the Great Northern Hotel, August 29, 1907.

Meeting called to order at 10 a. m., J. C. Lincoln in the chair.

On motion, J. T. Morrison was appointed sergeant-at-arms.

Roll call developed the presence of the following members:

Messrs. J. M. Allen, secretary Manufacturers and Shippers' Association, Rockford, Ill.; Ira S. Bassett, traffic manager, Chamber of Commerce, Pittsburg, Pa.; O. F. Bell, traffic manager, Crane Company, Chicago, also representing Illinois Manufacturers' Association, Chicago; J. M. Belleville, general freight agent, Pittsburg Plate Glass Company, Pittsburg, Pa.; F. T. Bentley, traffic manager, Illinois Steel Company, Chicago; L. B. Boswell, commissioner, Quincy Freight Bureau, Quincy, Ill.; E. B. Boyd, manager transportation department, Board of Trade, Chicago; A. R. Bragg, traffic manager, Merchants Freight Bureau, Little Rock, Ark.; A. B. Ewer, general freight agent, Harbison-Walker Refractories Company, Pittsburg, Pa.; H. E. Graham, general freight agent, Pressed Steel Car Company, Pittsburg, Pa., also representing Pennsylvania Malleable Company, Pennsylvania Car Wheel Company, Central Car Wheel Company, Pittsburg, Pa.; John Hart, traffic manager, Grasselli Chemical Company, Cleveland, Ohio; C. O. Johnson, traffic manager, H. J. Heinz Company, Pittsburg, Pa.; J. Keavy, commissioner, Indianapolis Freight Bureau, Indianapolis, Ind.; J. C. Lincoln, commissioner, traffic bureau, Merchants Exchange, St. Louis, Mo.; C. L. Lingo, traffic manager, Inland Steel Company, Chicago; H. S. Kealhofer, manager, Montgomery Freight Bureau, Montgomery, Ala.; E. J. McVann, secretary, Omaha Grain Exchange, Omaha, Nebr.; J. Chas. Maddison, traffic manager, Montgomery Ward & Co., Chicago; Walter Moody, traffic manager, H. W. Johns-Manville Co., Milwaukee, Wis.; C. A. Jennings, vice-president, American Cotton Oil Company, Chicago; H. R. Moore, traffic manager, Republic Iron and Steel Company, Pittsburg, Pa., also representing Tennessee Coal and Iron Company and Railroad, Pittsburg, Pa.; J. T. Morrison, traffic manager, Racine-Sattley Company, Racine, Wis., also representing National Association Implement and Vehicles Manufacturers, Springfield, Ohio; U. S. Pawkett, secretary and traffic manager, Fort Worth Freight Bureau, Fort Worth, Tex.; C. R. Peregrine, traffic manager, Macbeth-Evans Glass Company, Pittsburg, Pa.; H. W. Richards, traffic manager, American Radiator Company, Chicago; L. Richards, traffic manager, the Quaker Oats Company, Chicago; J. F. Ryan, traffic manager, the National Supply Company, Toledo, Ohio, also representing Chamber of Commerce, Toledo, Ohio; C. A. Shank, traffic manager, Illinois Brick Company, Chicago; M. Dight Smiley, secretary, Clinton Manufacturers and Shippers' Association, Clinton, Iowa; Ross W. Smith, traffic manager, American Sewer Pipe Company, Pittsburg, Pa.; F. L. Suter, traffic manager, Armstrong Cork Company, Pittsburg, Pa.; W. J. Tomkins, traffic manager, Great Western Cereal Company and International Salt Company, Chicago; F. H. Truax, traffic manager, Simmons Manufacturing Company, Kenosha, Wis.; L. A. Clark, traffic manager, Ball Brothers Glass Manufacturing Company, Muncie, Ind.; J. M. Guild, commissioner, the Commercial Club of Omaha, Omaha, Nebr.; R. L. Hearon, traffic manager, Colorado Fuel and Iron Company, Denver, Colo.; W. Williams, traffic manager, Paepcke-Leicht Lumber Company, Chicago; H. G. Wilson, manager Transportation Department, Board of Trade, Kansas City, Mo.; Geo. A. Wrightman, traffic manager, Sears, Roebuck & Co., Chicago; E. G. Wylie, freight commissioner, the Greater Des Moines Committee, Des Moines, Iowa.

Subject.—Application of long and short haul clause in interstate-commerce act; ruling of the Commission that maximum rates are not specific rates at intermediate points.

P. W. COYLE, *Chairman of Committee.*

Whereas the ruling of the Commission substantially nullifies one of the fundamental principles of the act to regulate commerce—that is, the fourth section, or long and short haul clause of said act; and

Whereas by said ruling the Interstate Commerce Commission have shifted the burden from the carrier to the shipper, the shippers thus being put under the necessity of challenging such rates as are violative of the fourth section instead of the carrier being compelled to apply rates under said clause or defend the applying of the higher rate at intermediate points: Therefore be it

Resolved, That we urge the Commission to issue a ruling that all interstate rates apply as a maxima at directly intermediate points and that tariffs shall so state, excepting only such rates as are specifically designated as exceptions under the provisions of the act.

Carried.

The simple and absolute justice of the proposition contained in Mr. Hardy's bill as it relates to all cities is self-evident, and justice ought not to wait on expedience or the incentive of those profiting by injustice always. The right of Government to regulate and prescribe rates has come to be universally admitted; the failure to do so makes the Government participate in the crime—the wrong and injustice of outrageous discrimination in favor of one place and against another.

STATEMENT OF HON. RUFUS HARDY, A REPRESENTATIVE FROM THE STATE OF TEXAS.

Mr. HARDY. Mr. Chairman and gentlemen, I would like the committee to give me such time as they can conveniently. I would like to present the matter fully because I regard this as a fundamental question upon railroad regulation, and to me it seems of the very greatest importance to the whole public.

The CHAIRMAN. I would simply suggest that there are a number of other gentlemen who desire to be heard, and that our time is limited. Please proceed.

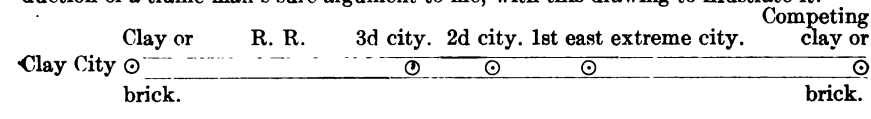
Mr. HARDY. I shall do the best I can to abide the pleasure of the committee.

Now, I will read a little also, because I have taken pains to make accurate in writing what I say, and eventually shall submit some other remarks [reads]:

Gentlemen of the committee, I am somewhat sanguine in my temperament and may speak with more positiveness of conclusion than my facts or reasoning justify. I was so sanguine in 1896 that in Texas I thought I could demonstrate that a double standard was a logical impossibility, to any and all. I flatter myself that among those who listened to the argument few, for the time being, at least, failed to admit my conclusion; but many refused to listen, and many forgot all the facts I marshalled, all the logic I used, and in the end the great majority pro hoc vice for that time at least remained steadfast to their fore-formed opinions, and I bowed to their decree. So, now, I am sanguine again. Pardon me if I declare that I can prove to this committee, to Congress, and to the country—even to the railroads—first, that the half is not greater than the whole; second, that a half loaf is not worth more than the whole loaf; third, that a part less than the whole does not include the whole or exceed the whole; fourth, that the shortest distance between two points is a straight line, and not a crooked one, that there is no divine law by which railroads are commissioned to equalize distances between unequally distant points or to make the greater distance the less and the lesser distance the greater. If I fail in establishing these propositions then my bill (H. R. 4801) has no merit. Then (1) the distance from New York to Spokane is greater than the distance from New York through Spokane to Seattle. The distance from Seattle to Lincoln or Grand Island is greater than the distance from Seattle through Grand Island and Lincoln to Chicago. (2) It is worth more to carry a ton of freight from Seattle to Lincoln than from Seattle to Chicago through Lincoln; from New York to Spokane than from New York to Seattle through Spokane. (3) That the distance from New York to Spokane includes all the distance from New York to Seattle plus the distance from Seattle back to Spokane. (4) That the shortest distance from Kansas City to Lincoln is not the straightest line from Kansas City to Lincoln, but is around by way of Omaha or through Lincoln to Omaha and then back to Lincoln, and, lastly, by same law it is the divine mission of railroads to equalize distances or reverse nature—as to distances—and render unequal distances equal or convert the longer into the shorter distance. By what happy, or unhappy, chance passenger transportation measurably escaped the operation of these mysterious and divine railroad laws I can not say, but it may be well not to forget that it did when we are met with the fear or the declaration that to dispute or disturb these divine laws as to freight must, would, or might cause the railroad heavens to fall and the nation's sure foundations to fail.

With confidence in behalf of the railroads let me submit that if the railroads, whatever their motive, see proper to charge you, Mr. Chairman, $5 to carry you from

Washington to Baltimore and $1 to carry you from Washington to New York it is their divine right and their own business; and you have no right to buy your ticket to New York and then jump off at Baltimore. You must, Mr. Chairman, go on to New York and then come back to Baltimore or pay the fare for that full trip, which is there for you. Then if you can't spare the time for the whole trip you may cut out all that beyond Baltimore. The fact that it is a little troublesome to keep a watch on a live committee chairman and prevent him from leaving the gilded palace car at Baltimore on the northward ticket and trip to New York may render the application of this rule difficult, but it is none the less as divinely right as it is with reference to dull insensate clay. The railroads can perhaps haul you to New York for $1 without loss—perhaps at a little profit just to fill in empties—and they must haul you at that price to beat the boats and "get business," but you must not assume that therefore they can afford to find you extra room on their full cars to Baltimore. Mr. Chairman, this is the very argument I heard advanced by a railroad traffic manager not many days ago. He said a road might haul stone from a quarry to a given city on the east at a bare profit just to compete with another quarry and another road entering the same city from an opposite direction. In that case, of course, the further west you stopped from the city in question the further your competing road and quarry on the east had to haul to meet you and the higher you could raise your rate and still be on equality in the competition, and of course you as a traffic man can not be expected to put down your rates to bare living point when you can make it higher and earn a reasonable profit. I would not go into this at such length, but it is an exact reproduction of a traffic man's sure argument to me, with this drawing to illustrate it.



From Clay City rate to first city, 300 miles, $1.00 per ton; from Clay City rate to second city, 180 miles, $1.50 per ton; from Clay City rate to third city, 120 miles, $2 per ton.

On March 7 I heard an argument before the Interstate Railway Commission. Lincoln was complaining of discrimination against her and in favor of Omaha. She complained that on cement, brick, coal, and all other commodities shipped to Lincoln, whether coming from the East or the West, the freight was about, as I remember it, 20 per cent higher to Lincoln than to Omaha, much of the stuff being shipped through Lincoln to reach Omaha. She thought she was thereby handicapped, and said that many of her enterprises had languished or ceased to exist. I heard the railroads admit the facts and then seek to justify. They said that there were some brick made at Galesburg, and to compete with Galesburg brick at Omaha, Kansas brick must have the Galesburg-Omaha rates. There were some little cement factories in Iowa and to meet competition from these the cement from Kansas must have Iowa rates to Omaha, while the rates to Lincoln from both Galesburg and Iowa were higher than those to Omaha, and therefore the roads made the rates to Lincoln from the West equally higher than those from the West to Omaha. I listened and to save my life I could not see, if they had shifted the point of competitive equality from Omaha to Lincoln, why every argument made to justify the lower rates to Omaha now could not with equal logic be made to justify the lower rates to Lincoln. But as the facts, undenied, were presented Omaha got the turkey and Lincoln got the buzzard all the time, and by railroad rates Lincoln was farther from any spot on earth than Omaha was, except for the outgoing freight from the two cities and the little local rates right around them; and even in this, I am told, that between the two the rates became equal at a point 20 miles from Lincoln and 35 miles from Omaha. Just why I've been unable to find.

But the roads contended (I heard them) that as jobbing centers Lincoln and Omaha were on equality, because they said the local rates out from each were the same. The shrewd railroad representatives were unable to see that Lincoln couldn't compete on a level with Omaha. Their great argument seemed to be that to rearrange rates equitably between Omaha and Lincoln would disturb all their adjustments east of the Missouri. They even went so far as on some commodity, I forget what, shipped from the West, to defend a higher rate to Lincoln than Omaha because somebody was contemplating starting a factory of that commodity somewhere in Iowa, and to meet this contemplated future competition they gave Omaha the lower rates. I once heard a hard-shell sermon. The old preacher said "The Jews, my brethren—the Jews were a far-seeing people." I forget the rest, but that is all that's wanted. The railroad people, Mr. Chairman, are a far-seeing people. The river-point cities of the United States, enjoying the advantage of cheaper rates than their competitors, are

the only things that stand and will stand in the way of a bill like H. R. 4801. The people of every other part of Nebraska favor it. As long as they get the benefit of heavy discrimination in their favor the temptation to Omaha, Kansas City, St. Louis, Memphis, Chicago, New York, Buffalo, and all other water-point cities is almost too great to be resisted. Only the cry of equal justice and of right appealing to the great, clear, honest minds of statesmen can be looked to for early relief. Enlightened self-interest even of these cities ought to make them join the interior towns in asking for equal treatment. But self-interest, immediate advantage, is so blinding that few look beyond the immediate to the distant or the future.

The natural advantages of a site on navigable waters ought to satisfy any city. It ought not to want artificial advantages. But such cities have wanted and do want such advantages and in getting them many of these cities have thrown away their natural advantages. Their rivers commercially have dried up. They are navigated only on paper and for the purposes of discriminative rates. Transportation is congested and becomes, on the average, slower than water. Commerce is clogged, even their own rates are advanced beyond reason, and they only are content because they fare better than their neighbors. The railroads are farseeing; they do well to give every city on any kind of water special rates, else those cites would wake, put little barges on the water, improve the streams, and carry slow and crude freights cheaper than the railroads can. By this wise course, all inland navigation is ended. The railroads obtain a monopoly. They wrestle with commissions over rates. They are gorged, choked with more than they can carry. The shipper can't trust to getting shipments through in reasonable time, and then must patronize the freights more costly aristocratic brother—the express company.

Mr. Chairman, when your bill, some years ago was made law, prohibiting rebates and discrimination, a great step was taken for equity, fairness, and right, but a longer step will be taken when discrimination between places is prohibited. But have our rivers commercially gone dry? If so, why? The answer to the first question is known to all men. But I'll give some detail. The Mississippi, the Red River, the Hudson, the Missouri—

Now let me ask this committee a plain question, leaving out the question of injustice to interior points. Is it for the benefit of the country to let river cities have relatively cheaper rates, if the roads recoup themselves on intermediate points so as to have an average rate that is higher than what would be an average of the combined reasonable water and rail rates? I say no. Every expense added to transportation is a burden on the people. If freight is hauled farther than necessary, it is unnecessary burden. So if transportation might be by cheap water route, but is carried by more expensive rail, there is a loss. If water is the cheaper method of transportation—the general good—true policy demands that all the freight that can be satisfactorily carried by water, be so carried, and the remainder only by rail. Then all the freight of the country can be carried with an outlay of not much over one-half of what will be necessary to carry it all by rail. See Jusserand. And all that is saved in the cost of transportation is added to the profits of the producer or saved from the costs to the consumer, and in either case is that much added to the wealth of the country. A new machine doubles the output of one man's labor. A new device saves so much waste of energy. Who does not know the world is enriched? A machine is discarded and another is adopted requiring twice the labor to accomplish the same result. That is what we have done in discarding water and carrying all our freight by rail. This aside from monopoly and excessive freights. Who does not know? We lose by the change. But we have gone farther. We have thrown the old and better machine away, but spend millions every year painting it up and repairing it to make it look like work, while we lock it up in our sun shed to look at it every day and promise ourselves to use it by and by, knowing all the time we can't use it because we have given the key to the owner of this costlier machine and know he won't give it up to us.

River regulation is freight regulation, say the governors. Is it so? Let me tell you what Kansas did in oil-trust legislation. She made it unlawful for the Standard to cut prices in one place, to kill competition unless it was lowered equally all over the State, instead of being lowered in one place and raised in another. Take a lesson. (See p. 9, Moline.)

I call upon the members of this committee, many of whom have personally acknowledged what I say, to witness that to-day the great Mississippi River flows by the great inland cities asleep and useless, carrying not the commerce of this nation, and why?

Mr. STEVENS. But it regulates the rates just the same.

Mr. HARDY. I want to tell this committee that every member of Congress who votes for appropriations for the continuation of improvement to rivers in order to regulate commerce and give river points cheaper rates is throwing away the money of the people for the benefit of some one city and not for the benefit of the whole people.

Mr. STEVENS. But I say that the Mississippi River, in flowing by these great inland cities, as you say, regulates the rates just the same.

Mr. HARDY. I will tell you just how much it regulates them. It regulates them by giving cheap rates to Memphis and St. Louis and Helena and allowing the rates to the points outside of those river points to be high enough to recoup by doubling, trebling, and quadrupling their rates. It is a plain proposition. From St. Louis to Helena—and it is so illustrative and so applicable to all their rates—the rate on flour per carload is 20 cents per 100, but between Helena and St. Louis there is a little town called Paragould, 125 miles south of St. Louis, to which the rate is 60 cents per 100 pounds, or nearly. You cut down your rate and you regulate your rate to St. Louis and Memphis, but you do it by giving the right to raise the rate to the intermediate points, robbing the people of the interior in order to hold down the rates on the river at the larger points.

Mr. ADAMSON. Is there a railroad at that point?

Mr. HARDY. It is a sort of railroad center, and on the road between Helena and St. Louis.

Mr. ADAMSON. There is a railroad there which competes with the river steamers?

Mr. HARDY. Paragould is not on the river, but Helena is. But they will haul the flour from St. Louis through to Helena, and when it gets to Helena it is delivered at 20 cents per 100 pounds, while if it stops at Paragould it is 60 cents per 100 pounds.

Mr. STEVENS. Perhaps the best way to do would be to abolish the river.

Mr. HARDY. When I read an argument made before the Interstate Commerce Commission I jokingly remarked that I intended to introduce a bill to abolish the Mississippi and all rivers. There are instances, and numbers of them, where a man ships first south to reach the river points, and then ships back again.

Mr. KNOWLAND. Are you opposing river and harbor improvement?

Mr. HARDY. I am in favor of it, and I want to see every river in this world made a navigable stream, not only a navigable stream, but a navigated stream. I tell you that in my opinion—and I know nothing about it excepting what my eye tells me—the Mississippi River to-day could carry on its bosom more freight than 50 railroads running out of St. Louis or out of Memphis together. But she does not carry freight, and why? Because under our laws we permit the railroads centering in St. Louis to lower their rates from St. Louis to every point which can be reached by the water of the Mississippi River, and then to the points outside of those which can be reached by the river they raise their rates, and you all know it.

Mr. ESCH. You believe, then, in depriving a town of its natural advantages?

Mr. HARDY. No; I believe in giving a town its natural advantages, but not adding to artificial advantages unnatural advantages.

Mr. ADAMSON. That is, you are referring to the towns on the river?

Mr. HARDY. St. Louis is on the river, and every city surrounding St. Louis would have to send their freight there in order to get the benefit of low-water competition, because St. Louis has the river rate. If the railroads want to compete with the water between Helena and St. Louis, let them lower their rates all along their lines, and the result would be that the river would then actually carry all of the freight of a certain kind, and the railroads all the freight that is more costly and expensive, and the kind that has to be hastened.

Let me give you another illustration. A gentleman whom I know tells the truth, said that some years ago in the city of Memphis the railroads offered a rate on cotton from Memphis to New Orleans of 50 cents a bale, and why? Because at that time there was a boat on the river waiting to take a freight load down. But what do the rivers do now? They have no boats on them. I sat two days on the deck of a vessel going down the river with the Presidential party to Memphis, and I did not see a freight load on that great river, and I called the attention of the other gentleman to it and he did not see it.

Well, 50 cents a bale, and what does that mean? That meant that the boat at the wharf did not get the cotton, but that the railroad did. Not only that, but other things. The rate now on cotton from Memphis to New Orleans, which is 456 miles, is 85 cents a bale, and why? To keep Memphis from putting a boat on the river. What is the rate now for a like distance in my country? From where I live in the State of Texas to Galveston is a level country and also a country where we have the finest railroads in the United States, but they charge me from my town to Galveston 55 cents a 100 pounds, or 75 cents a bale, instead of 85 cents upon the Mississippi River, and why?

Mr. STEVENS. That is entirely within the State of Texas?

Mr. HARDY. Yes, sir.

Mr. STEVENS. And your commission has jurisdiction to reduce rates to reasonable rates?

Mr. HARDY. But my commission has not fixed the rate.

Mr. STEVENS. But they have the power.

Mr. HARDY. They have the right to fix the rate.

Mr. STEVENS. Then why do they not do it?

Mr. HARDY. No doubt you have got me, but I am talking about justice.

The CHAIRMAN. Let us have an answer to the question of Mr. Stevens.

Mr. HARDY. As to why the commission does not fix a reasonable rate—let me give you a fair and square answer: When the commission idea was projected—as I understand since I came here—old Judge Reagan, of my State, fought the commission idea and wanted a law passed to fix and regulate rates. I do not know whether he was right or not, but I took the same view. When a Government commission of three or seven men has absolute power over the destiny of the nation in so far as fixing rates is concerned, and you have to go before that commission every day in the week and every week in the year, year in and year out, you have a commission surrounded by railroad attorneys, the ablest, the shrewdest, and the most genteel gentlemen in the world, and I want to say to you that the atmosphere around that commission becomes full of railroad views.

Mr. STEVENS. Is that the case in Texas?

Mr. HARDY. Yes, I think so—well, I am not charging that, but if you will put seven men on this commission, seven of the best men in the United States—and I have been on the bench, if you will pardon me for a personal allusion, but I know that if you get an intricate case before a court or a jury, and on one side put an able, talented, clear-headed, honorable, and upright lawyer to defend the interests of one of the clients, and on the other side you put nobody, or a man who has no knowledge of the legal points, nine times out of ten the well-represented side of that case walks off with the justice, the law, the injustice, and the verdict.

Mr. ADAMSON. Tell me why it is that the balance of the world does not employ lawyers, too?

Mr. HARDY. You are a shipper of cotton and I am a shipper of cotton on a railroad. I am paying 55 cents a hundred pounds; I have 100 bales, which means $200 to me. I go into the court room——

Mr. ADAMSON. But there are a thousand more men just like that who are shipping cotton, and they could employ the best lawyers in the country if they wanted to, could they not?

Mr. HARDY. Oh, they do get together; and furthermore they send us here as their representatives to pass laws to prevent injustice and outrage, and they got together on me.

Mr. ADAMSON. But there are so many who do not try to enforce them, until it is too late.

Mr. HARDY. You are right about that, but if you make a law like the present law providing that the railroads shall not charge more for the long than the short haul, providing conditions are similar, you will wipe out the entire interstate commerce law, and every member of this committee knows, when he thinks of it, that all he has to do is to take the case up before the commission——

Mr. RUSSELL. Referring to the action of the Texas commission, isn't it a fact that in every instance in our State where the commission has sought to lower rates they have been taken by the throat by the bondholders of the railroads?

Mr. HARDY. I can answer that question by saying that practically it is so, that they were met, when they attempted to reduce rates on cotton from 60 to 55 cents—mark you the railroads voluntarily made this rate—they were met by the claim braced up by affidavits, that the rates would bankrupt the roads of Texas, and injunction proceedings were threatened at every step, and I want to say that they have been enjoined on express rates to-day.

Mr. ADAMSON. But you ought to have good lawyers to fight those injunctions. You can get just as good lawyers as the railroads can.

Mr. HARDY. At the end of seven years you get a decision, and in the meantime your clients who have been robbed get nothing, and he has to bring the suit.

Mr. ADAMSON. I am in favor of your proposition, and when the Hepburn bill was up I tried to strike out that qualifying clause in that section, and if we ever succeed in getting that corrected so as to meet the decision of the Supreme Court, then we are going to need good lawyers as bad as ever.

Mr. HARDY. If you can put a declaration in the law that it shall be unlawful to charge more to go to a place than through it, and fixing a penalty for such a charge, then the railroads will have to abide by

the law, because there is no provision by which they can struggle out of it.

Mr. ADAMSON. As long ays ou keep all of the lawyers on one side the law is going to be construed with the lawyers.

Mr. HUBBARD. Do you say that the Texas commission has not acted with respect to the conditions existing within that State?

Mr. HARDY. Excuse me; they have acted, but they have not succeeded in effecting the action.

Mr. HUBBARD. Let me ask whether the Louisiana commission has taken action with respect to like conditions within that State? I am not familiar with the facts, but it has been intimated to me that something has been done to enforce there the beneficial results, and I am anxious to get at the facts.

Mr. HARDY. I am glad you made that statement, because I want to make a counter statement. You will find men everywhere who are telling us that the railroads are now controlled, that they are not giving rebates——

Mr. HUBBARD. Pardon me, but the information that I am referring to came from those interested in river transportation, which they say has suffered just in the way you state, so that the source of my information is not open to question.

Mr. HARDY. I do not question the honesty of the men who give me this information, but men will hear arguments before the Interstate Commerce Commission, and men will get up in Texas to-day and tell you that our railroad State commission has reduced freights, and has been wonderfully successful in Texas; and one of the strongest men on that commission, before the legislature at the last session, testified that in a general round-up and parceling out of the rates to-day in Texas that they were no lower than they were before the commission was created.

Mr. STEVENS. Is there any earthly power that the legislature can give the commission that it has not given?

Mr. HARDY. In Texas, I think not.

Mr. CUSHMAN. And yet it has not been a success.

Mr. HARDY. I asked my people: Are you satisfied with the results; and the first one is to tell me that he is satisfied. You get your commissioners, fair men, straight men, and honest men, but every day and every week and every year they hear nothing but the railroad side of every argument presented—they do occasionally hear something, I am talking about the facts—but just as naturally as the grass springs from the dew of heaven, just that naturally they begin, after a while, to see the railroad side of these questions. And I say they do, because both courts and commissions have sat upon the bench and heard the representatives of the railroads propound two propositions, the one being that they tax the traffic all that it will bear, and the other that they regulate their rates in order to get business, and it is those two rules upon which they regulate their trade.

Mr. STEVENS. You have stated that the Texas commission had equally good counsel?

Mr. HARDY. Yes.

Mr. STEVENS. Then is it not a fundamental proposition, and must you not repeal the law of nature rather than the provision of the fourth section of the interstate-commerce act?

Mr. HARDY. No, sir.

Mr. STEVENS. Why?

Mr. HARDY. Not at all. I am undertaking to tell you that fair-minded men may yet be so blind in their judgment—but I want to say to you that it has been said in Texas that when the railroad-commission idea was broached, the railroads spent hundreds of thousands of dollars to defeat the passage of the law, but that to-day they would spend millions to keep it.

Mr. RUSSELL. Before the Texas commission was inaugurated I remember the time when they shipped salt in such quantities from Texas to Michigan that the salt concerns got practically nothing and employed but a few men in that little business, but since the commission has existed the salt works have been enlarged to such an extent that they now have four or five different concerns and that they now are manufacturing from twelve to fifteen hundred barrels of salt a day.

Mr. HARDY. A few local places may be benefited by the fact that the railroads are not allowed to charge more for the short haul than the long haul excepting in rare instances in Texas, but—Now, have you ever sat before the railroad commission and heard a case presented as I did for the first time the other day? There was presented all kinds of figures, or data, of rates and of distances—and there are not ten men in the United States or anywhere else on the globe who could sit there and formulate eleven, twelve, fifteen, or twenty millions of specific rates with any idea of what was right or what was wrong.

Mr. KNOWLAND. Would your criticism of the State commission of Texas apply equally to the Interstate Commerce Commission?

Mr. HARDY. Worse to that Commisson.

Mr. BARTLETT. Why?

Mr. HARDY. Because they have a larger field to try to reward.

Mr. KNOWLAND. Do you think they become influenced by the railroad view?

Mr. HARDY. I think they would imbibe as much as any men on earth would when the best side of a case was presented to them always.

Mr. TOWNSEND. I am very much interested in your statement about the fiction of water competition on rivers, and I have always felt that that was a gross injustice to the people of the United States. But do you discriminate between such alleged water discrimination and actual water competition, where it actually exists?

Mr. HARDY. Most certainly; yes.

Mr. TOWNSEND. You admit that there should be a difference in those cases where actual competition does exist by water.

Mr. HARDY. Not that they should be allowed. Here is the point, that the railroads should not be allowed to charge more for half way than the whole distance. But the river point has the advantage that nature gives it. The water point is located on the river, and it thereby has the great advantage; so, I say, why give it an additional advantage, because they are already enriched by the gift of God.

Mr. CUSHMAN. But they will not get the advantages. If you take away their natural advantage, what benefit do they get by having a theoretical advantage?

Mr. HARDY. The river does not give an advantage to inland freight. The river does not enable inland freight to get to the river point cheaper, but you are seeking the theory upon which railroads act

and upon which commissions permit them to act, that because there is a river from one point to another point, therefore the railroad has a right to raise the rates between all intermediate points——

Mr. HUBBARD. Is there not the further point of additional disadvantages heaped on the interior point that the railroads make up in rates to interior points the concessions that they give on the river points, thereby destroying perhaps the possibility of river competition? Is not that the way it is?

Mr. HARDY. You have stated exactly what I wanted to make clear before this committee.

(At 12 o'clock noon the committee adjourned, to meet again at 1.30 p. m.)

WASHINGTON, D. C.,
Wednesday, March 11, 1908—1.30 o'clock p. m.

At the expiration of the recess the committee resumed its session.

STATEMENT OF HON. RUFUS HARDY—Continued.

Mr. HARDY. Mr. Chairman, I suppose that the absence of a great number of the members of this committee can not be avoided at this time; and time, I presume, is a matter of importance to the committee. I see that Mr. Stevens is here, who suggested a matter which, while it is a diversion from what I intended to say, I want to take up.

He suggested that to prevent the giving of lower rates to water points than were given to interior points between the point of shipment and the point of destination—in other words, to prevent the railroad from giving a lower rate to a terminal on the river than it gave to a point between that terminal and the point of origin of the shipment of freight—would be to deprive the river or the river cities of their natural advantages. That is an objection to the principle of this bill that is frequently used and argued by railroad advocates, and I have no doubt whatever that they do it with the utmost sincerity. His proposition is that that would change the law of nature and deprive the river site of its natural advantages.

I maintain that the river site has natural advantages by virtue of its being on the river; that by reason of that, all nearby shipments come to the river in order to get shipments down the river. Take St. Louis, for instance. It has 7 miles of wharfage. It has a great number of railroads that come into it from all over the surrounding country. Every facility for shipment by that river down its water is an advantage by nature that the city of St. Louis has over any city that is not on the river. But because it has this natural advantage, shall we add to it another advantage and give it cheaper rates from interior points than the points that are not on the river? In other words, because the city has much, shall you give it more? Because the other city has little, shall you take away what little if has?

Mr. STEVENS. No; but suppose the proposition were this, that if the river were not there the town in the interior would have just

exactly the same rate that it does have if the river is there. How is that town in a position to complain because the river is there?

Mr. HARDY. Let me give you an answer to that. Take the town of Paragould, which I instanced.

Mr. STEVENS. Yes; that is what I had in mind.

Mr. HARDY. The town of Paragould has no right to complain that the rates of freight from St. Louis to Helena are low, provided the low rates at Helena are not made good by recoupment upon Paragould, or provided the road does not ship to Helena even cheaper than it does to Paragould. If it ships to Helena cheaper than it does to Paragould, between the two either the road is making an unreasonable rate on Paraguold, or it is losing money on Helena and recouping money on Paragould. Is not that true?

Mr. STEVENS. If the rate to Paragould is unreasonable, that can be corrected now.

Mr. HARDY. It can be corrected, possibly, at the end of a seven years' litigation, when every man who has paid the exorbitant freight is "busted" or gone, or finds it absolutely fruitless for him to attempt to gather back what he has lost.

I will state that the cattlemen had a long litigation before the Interstate Commerce Commission, and I believe they finally succeeded, at the end of about seven years, in reducing a rate; but every man's cattle that had been shipped on that line that was not a party to that suit was perhaps paying no attention to it.

Mr. STEVENS. The law has been changed since that time. We have given the Commission power to fix the rate.

Mr. HARDY. That power has been given; but it is the exercise of that I want.

Mr. STEVENS. They can exercise it.

Mr. HARDY. In ten years' time, yes.

Mr. STEVENS. They can exercise it in ten minutes' time.

Mr. HARDY. They can change a rate in ten minutes' time?

Mr. STEVENS. After hearings.

Mr. HARDY. And how long a time must elapse before a hearing?

Mr. STEVENS. Any time they see fit.

Mr. HARDY. Then they have got an appeal to the courts. It takes from two to seven years to try any of these cases, and then you require every man with a little shipment, who is robbed, to resort to the courts to get himself treated fairly. But I want to treat this question in a larger way.

Mr. STEVENS. But you have all the power that is possible in Texas and yet you have a resort to the courts there.

Mr. HARDY. I am glad you mentioned that fact. They have resorted to the courts. There is a case now against the express companies, brought by the Commission, that has been tied up for over two years, and over a thousand pages of testimony has been taken in it. It is hanging in the courts yet, and every person sending an express package pays the rates which are charged by the company.

Mr. STEVENS. Then, to get complete relief, we would have to abolish the courts?

Mr. HARDY. No, sir; to get complete relief you can enact a simple statute providing, upon a correct principle, a law by which freight rates shall be regulated, and making it a penal offense to violate that law.

Let me go farther; because that map is yonder, and I want this committee to see as I see, if I see right. If I see wrong, I hope they will see where I am wrong.

We have a great lumber industry down in south Texas that saws lumber by the millions of feet, down toward Beaumont and in Louisiana. That lumber-mill industry is a great industry. The railroads charge us, from Beaumont by way of Houston up to Corsicana (a distance of 300 miles, combined) 18¾ cents per 100 pounds on the shipment of lumber. The same roads ship that lumber through my town on to Memphis, Tenn., or to Cairo, Ill., at a price of 16 cents per 100 pounds. If the car was cut off at my town, the bill of lading would call for 18¾ cents per 100 pounds; but if you take it back, or the consignee there refuses to take it, and they have another customer on in Memphis who will take it, they will load it back onto the train, and when it gets to Memphis the freight is 2¾ cents less.

Mr. STEVENS. Is your 18-cent rate in itself a reasonable or an unreasonable rate?

Mr. HARDY. I say that it is unreasonable for the reason that the railroads do not maintain a 16-cent rate to Memphis from year to year unless they are making a profit by it. But when our railroad commission met to undertake to reduce that rate on lumber, they found themselves divided among themselves. One of the oldest and most honorable men in the State of Texas thought that it would bankrupt the railroads to reduce that rate on lumber. But the railroads had actually reduced it voluntarily for greater distances. It is 17 cents to St. Louis, and 16 cents to Memphis and to Cairo; and as for us, who own or should own the great lumber belt of that section of the State, our children pay more to house themselves with Texas lumber than the people of Illinois do. Is it right?

Not only that; but I say the railroads would not ship cotton from Memphis to New Orleans from year to year at 17 cents a hundred pounds if they were losing money by it. Within our State, however, for half that distance, they charge us 55 cents a hundred pounds. We raise 3,000,000 of bales of cotton in Texas, and pay on it an average of $2.75, or, let us say, $2.50, per bale for freight to Galveston to get it to the ocean. They ship that same commodity at 85 cents for a longer distance in a different field; and the producer pays the additional $1.50 or $2 more per bale. That makes the Texas cotton raiser pay from three to six millions of dollars every year in excess rates, unless the railroads are robbing themselves when they ship cotton to New Orleans from Memphis at that price.

That is not all. That whole map is plastered over with such iniquities of inequality as I have given you in the case of cotton and lumber in Texas. For a less distance than to Memphis, when they ship the lumber of Texas to the western portions of Texas, they charge 25 cents a hundred pounds. Why do they make that difference on lumber? They say: "Because you might bring the lumber down to the Gulf, and then take it around to the mouth of the Mississippi, and up by way of New Orleans, and carry it 5,000 miles." (I do not know what the distance in that crooked stream would be.) But not a boat carries the lumber; the rate does not meet any actual competition. It meets a paper competition. No; they do it because as long as they favor St. Louis and Memphis with specially low rates,

those cities are not interested in putting boats on the river, and they do not do it.

Let me give you some other facts: Yonder at the east of one of those States is Spokane, 400 miles, I think, from Seattle. From New York you ship a carload of freight. It passes through Spokane on the way to Seattle. The charge at Spokane is equal to the rate to Seattle and then back to Spokane. If the cargo were a passenger it could jump off when it got there; but as it is dead, insensate matter, it can not jump off.

Mr. STEVENS. Have not the Commission held that the rate from New York to Spokane was a reasonable rate in itself?

Mr. HARDY. I do not know what the Commission has held.

Mr. STEVENS. I think they have.

Mr. HARDY. If the Commission has held that white is black, or that twice two is six, does it make it so? I present a plain, simple, true statement of what is done. Is it right?

Not only that; but when you get to the Pacific, as stated by the gentleman here this morning, take the case of manila rope—$72 a car, I believe the rate is, from Seattle to Lincoln; $72 a car less when they carry it through Lincoln on to Omaha.

Why, gentlemen, it is not a question of the reasoning pro and con. The railroads say they base their freight charges on the Missouri River, and everything coming from the East is regulated along the principle I suggest—the farther the distance, the greater the charge from New York or Seattle, until you get to that river.

Mr. TOWNSEND. If you had this rule in force as law, would it not result in raising the lower rate instead of reducing the higher rate?

Mr. HARDY. In my race for Congress two gentlemen asked me that question, because I asked them whether they were in favor of a long and short haul clause with the tail cut off, with that condition eliminated. They said that they would be in favor of the long and short haul clause provided the operation of it did not raise the rate on lumber from Beaumont to Memphis up to 17¾ cents, instead of reducing the rate from Beaumont to Corsicana down to 16 cents—the very proposition I understand you to make. My reply to them was that by the consensus of opinion of all parties, by the unanimous concurrence of all thinking men, the Government has the right to fix rates, and not to leave it to the railroads as to whether they shall raise them at the end or lower them in the middle.

Mr. TOWNSEND. Then you will have to put another provision in your bill, will you not, for that? Because if you leave it to the Commission, which you do not trust, they will not be liable to call that higher rate an unreasonable rate, will they?

Mr. HARDY. Why, certainly. You do not have to put in another clause, but you leave it to the common sense of a commission or of anybody else that if the roads have hauled freight at 16 cents per 100 pounds for twenty years to Memphis, they can still haul it at that rate for a less distance right on the route. But I want to say this: I do not want the railroads to be compelled to do one single thing except what is right. If a reasonable rate is 18¾ cents to Corsicana, and more to Memphis, let them adopt it. But I do say that with the confusion that they can raise in the minds of a commission or any other body with a thousand rates for alleged competi-

tion, a thousand reasons for alleged discrimination, as long as you give them the privilege you can not regulate them upon principle.

In our State (and I want to say with reference to our State commission that they have been an energetic and an active body, and they have within the intrastate limits regulated rates upon the principle of my suggestion) they give a rate from a central point with a little rise every 20 miles out from that point; and to that central point there is a little greater charge as you get farther and farther away from it. They have put into operation largely the principle of this measure; and so far as the State of Texas is concerned, it has been a fight against the railroads on the ground that you suggest—that they are asked to put into effect an unreasonable rate, and therefore they can not comply with the Commission's request for legislation.

If it is unreasonable, they are right; but I maintain the proposition that it is not unreasonable to say that they can not carry cotton lower than 55 cents per 100 pounds, but that will have to be fought out before some court or before some commission. All I want to do is to prevent your railroads from giving rates at competing points to kill water navigation.

Mr. TOWNSEND. I have not read your bill carefully; but your bill, as I understand it, contains the old provision, without the "similar conditions," and so on?

Mr. HARDY. Yes.

Mr. TOWNSEND. Therefore it would make it possible for the railroad to charge the same rate to the town in Texas to which you refer that it did to Nashville?

Mr. HARDY. The same rate to Memphis.

Mr. TOWNSEND. That would be discrimination still, would it not?

Mr. HARDY. I do not mean to say by my bill that they shall charge as much for a short haul as for a long one, but that they shall not charge more.

Mr. ADAMSON. It is possible to charge the same rate to every station on the road, however.

Mr. TOWNSEND. What I mean to say is this: You have simply fixed it so that it can not be higher for the shorter haul than it is for the longer, but it can be the same.

Mr. HARDY. Yes.

Mr. TOWNSEND. That would not relieve you very much, would it?

Mr. HARDY. It would relieve my State to the extent of six millions of dollars a year and more. Take all the traffic, pass that law, and the reduction in transportation inside of two years will be more than enough to pay the twenty-four millions of dollars which is the cost of official life in this country of ours.

Mr. TOWNSEND. Let me ask you one more question there: You suggested a little while ago that owing to the exorbitant prices of lumber in the State of Texas the resident of Texas paid more for building his home than the man in Tennessee did.

Mr. HARDY. Out of his own lumber.

Mr. TOWNSEND. Out of his own lumber; yes. What proportion of your own lumber is consumed in the State of Texas?

Mr. HARDY. Ninety-nine per cent. I mean the man who builds his home on the farm.

Mr. TOWNSEND. Do you think, then, that Federal legislation could under any circumstances affect that 99 per cent?

Mr. HARDY. I think this: That whenever Federal legislation passes a law prohibiting discrimination in favor of one city against the other and preventing the railroads from charging more to reach a destination than they charge on intermediate points, every State commission will take up the cudgels and carry on the fight for the interest of the people. Not only that, but my State commission is ready to take it up independently; but it is cumbered by injunctions. It is cumbered by a thousand different processes that the railroads can resort to under that condition that you have attached to this law—"providing conditions are similar."

Mr. TOWNSEND. To carry that out, if the large portion of your traffic is intrastate——

Mr. HARDY. Oh, no; the large portion of our traffic generally is not. It is only in reference to lumber.

Mr. TOWNSEND. I mean lumber; that is what you are talking about.

Mr. HARDY. Yes; and the same way with cotton.

Mr. TOWNSEND. And the same with cotton. That being true, would it not be better to devote your energies to getting State relief along that line, which could not be affected, except incidentally, as you refer to it, by example, through a Federal law affecting those same products? I am not opposing your idea, because I am quite in sympathy with one feature of your argument, viz, that fictitious water competition ought not to be the proper argument to——

Mr. HARDY. I am glad you ask the question. Unfortunately for us, lumber and cotton are not the only commodities we use. We use machinery, we use wire, we use a thousand different things whose aggregate price is far more than the price of our product of cotton and lumber. The fact is that our cotton all goes into commodities that we buy from outside of the State, and this principle applied to Texas means the same principle applied all over the United States. As a representative of the entire country as well as my own little section, I think it is my duty to endeavor to regulate or to make the laws do justice even to Spokane and to Lincoln and to Helena and to Paragould and to the other cities. In the legislature of Texas, however, the first law I would advocate would be that within the State the railroad should never charge more for a short haul than a long haul.

Mr. STEVENS. You practically have that condition now, as you state.

Mr. HARDY. We have it, and yet to some extent it is not so. I am not fully prepared—I only compare these things because I see that the voluntary rates of the roads in other places are so much less.

Mr. STEVENS. There are two propositions I would like to ask you about. First, you have your proposition, in a way, in force in Texas?

Mr. HARDY. Yes.

Mr. STEVENS. That is, you have a graded schedule?

Mr. HARDY. Yes.

Mr. STEVENS. And yet under that system your rates from the interior to the coast for your cotton are excessive, as you claim?

Mr. HARDY. They are, unquestionably.

Mr. STEVENS. And yet that matter is in the power of your State commission?

Mr. HARDY. Certainly.

Mr. STEVENS. So far as they can control it under the constitutional limitations, which can not be changed. Yet it is without their power to reduce it, although they have that statute in the State law?

Mr. HARDY. I want to suggest to you that you can change that situation if you pass this law.

Mr. STEVENS. You can not change the constitution of your State.

Mr. HARDY. Nevertheless, if you pass a law stating that it shall be unlawful for a railroad to charge more for a short haul than for a longer haul, without any condition, that blocks out that first requirement (and the condition that you have now does do it); and if your State legislature then passes the same kind of a law, then your commission, when it puts into operation the statute laws of the land, both national and State, can not be enjoined by the courts.

Mr. STEVENS. But now you come right back to the proposition that Mr. Townsend advanced—that after you get that beneficent condition your rates still will be too high, as they are now.

Mr. HARDY. I am willing to take the chance that this whole country would permit every rate to be raised to the highest point rather than to put it at the medium between the highest and the lowest.

Mr. STEVENS. One thing more: You state that you consume a lot of material which you exchange for your cotton. Do you not get a great deal of that by water transportation, or by rates that are affected by water transportation?

Mr. HARDY. They are nominally affected by water transportation, yes; and the result is that glassware sent from Kansas to-day gets a rate to Houston that is—I forget how much, but very much—cheaper when it goes through Fort Worth than when it goes to Fort Worth. The northern part of our State to-day is a great black-land belt, inhabited by a pushing, prosperous, thriving, industrious, intelligent, and honest people. Nevertheless, they are required to pay for freight from Kansas City a far greater sum than is paid by the inhabitants of the southern part of Texas when that freight comes right through Fort Worth to South Texas.

Mr. STEVENS. But could not your people get their freight by way of Galveston or Houston, by water, and then take the advantage of——

Mr. HARDY. From Kansas City?

Mr. STEVENS. No; could they not get it from New York or Baltimore?

Mr. HARDY. You mean that is the theory on which they give them cheaper rates to Houston?

Mr. STEVENS. Certainly.

Mr. HARDY. They say: "Because you might improve the Mississippi River at Kansas City, and you might put boats on the river at Kansas City, and you might run them down the Mississippi and come down the Gulf and into Galveston, and then up the little canal from Galveston, the bayou from Galveston to Houston, 60 miles long—because you might do all this, therefore we will give Houston a cheaper rate." But they have not done it. They are not competing. There is no competition. But there might be this year, next year, or twenty years from now; and for that fictitious, hypothetical, imaginary, and future competition the laws of our country let them give that difference.

Mr. BARTLETT. May I ask you a question?

Mr. HARDY. Certainly.

Mr. BARTLETT. I am very much interested in what you say. Suppose an investigation should determine that that rate on lumber through Corsicana of 18¾ cents was a reasonable rate, or was not an unreasonable rate for that distance. That would establish the rate. In order to make it a reasonable rate, will you have to raise the rate?

Mr. HARDY. Unquestionably if that is reasonable, it is not reasonable to charge less than that to Memphis.

Mr. ADAMSON. The lower rate is rather in the nature of a rebate?

Mr. HARDY. It is a rebate, and it is a discrimination.

Mr. STEVENS. If it is a discrimination, can it not be corrected under section 3 of the interstate-commerce act?

Mr. HARDY. I only know that it has not been.

Mr. STEVENS. Can it not be done under the present law?

Mr. HARDY. I do not believe it can, because I do not believe you can get a commission that will hear the arguments of a dozen railroad men on 20 different occasions and take 20,000 pages of testimony about why it is reasonable.

Mr. STEVENS. Let us get right down to this: If it is unreasonable and unfair and illegal and discriminatory, and if there is a law which can correct it, ought not that law to be resorted to?

Mr. HARDY. And if there is no law which can correct it, there ought to be a law.

Mr. STEVENS. But I think you will find that there is a law; that it has been on the statute books; that it is being enforced, and that the Commission do correct just such evils when their attention is called to them.

Mr. HARDY. Unfortunately, I am speaking as to the conditions existing. I do not think there is any such law by which they can; or, if I admit that there is, then I say that they can not correct it except in rare instances.

Mr. STEVENS. I will admit that they do not always do it.

Mr. HARDY. Very rarely; why that is I would rather have someone else explain.

Mr. BARTLETT. I want to follow up the question I asked you. Upon investigation by the Interstate Commerce Commission, or by this committee, if they took the time, suppose it was decided that the rate on lumber up to Corsicana of 18¾ cents per 100, of which you complain, is not an unreasonable rate, and that to prevent discrimination against Corsicana and like towns the railroad ought to raise the rate from Corsicana up to Memphis, or whatever you want to call it. How is that going to benefit Corsicana? That is what I want to get at.

Mr. HARDY. Let me tell you: That is exactly the point I want to argue. Dallas is contending very strongly for canalizing the Trinity River up to Dallas, the project being advocated by the great newspapers of the city and talked of by her leading citizens, for the avowed reason that it would give low rates to Dallas on freight, thereby giving her a great advantage over her nearest competitor—Fort Worth. Fort Worth, within thirty miles of Dallas, would not get the lower rates. Dallas would, and Dallas would thereby be built up.

I want to say this: That if you do not lower the freight rate any more to Dallas than you do proportionately to all the cities whose lines converge at Dallas, then your water transportation will not be paper transportation, with no boats on the water. When the roads have to compete all along their lines, they will abandon coal and

cement and brick and logs to the rivers, which ought to carry them, and which do carry them in every other civilized country on the globe but ours—every other country like ours, or every other at least as much civilized—and the roads will carry the higher classes of freight.

Over 60 per cent of the commodities that are carried by the railroads in this country are coarse commodities, where the freight charges are very nearly equal to the original value. Those commodities are carried now by the railroads of this country, which run along your navigable streams, right by their side, and carry the saw logs that ought to float on the water. They do it because, by an unfair competition, they have killed your water navigation, and left themselves alone to carry the freight of this country—a burden which their great leaders say they can not carry, but which they are still unwilling to turn loose.

Mr. STEVENS. On that point, let me ask you this question: If the railroads can carry certain classes of freight cheaper than it can be carried by water, it is for the public interest that it should be done, is it not?

Mr. HARDY. But they can not carry it cheaper. I can prove to you by 20 men, railroad men and others, that the railroads can not carry freight of that kind for less than five times the cost of water transportation.

Mr. STEVENS. That depends on conditions; but one of the great railroad authorities of the country has stated that as to the rivers, like the Mississippi and the Missouri, with anything less than (I think) a 9 or a 10-foot channel, a box car can beat a barge. That is the statement he makes. Now, if a box car can beat a barge on a channel of that depth, is it not for the public interest that the box car should carry the freight?

Mr. HARDY. If a box car can beat a barge on what?

Mr. STEVENS. On the freight rate.

Mr. HARDY. On what kind of a river?

Mr. STEVENS. Any kind of a river that has not to exceed a 9 or a 10 foot channel.

Mr. HARDY. There is only one thing to say about that. It is contradictory to all that I have read stated by the railroad authorities and by others.

Mr. STEVENS. What is probably the most successful railroad men in the country made that statement before this River and Harbor Congress down here. If that be true—and he has built large railroads on that assumption, and made them successful—is not it for the public interest that freight should be carried in the cheapest way?

Mr. HARDY. Unquestionably.

Mr. STEVENS. If the Interstate Commerce Commission has held (as I think it has held once, and I do not know but twice) that if such a law as you have proposed were in effect the city of Spokane could not get its freight a cent cheaper than it does now, because the rate to Spokane from the East is a reasonable rate, and if your law went into effect the freight would be simply sent down by water because it is so much cheaper, and then sent from Seattle to Spokane, which would make the rate exactly as it is now; if that would be the condition, as

the Interstate Commerce Commisision has found, what is the use of your bill so far as Spokane is concerned?

Mr. HARDY. If the rate to Spokane is reasonable, then the rate through Spokane to Seattle is unreasonable.

Mr. STEVENS. Not by any means at all; because the freight can be carried there at that cost.

Mr. HARDY. The proposition is this: That if the freight can be carried to Seattle at the price that the roads make, then, if they make only a reasonable profit at Seattle, they have not a right to make up the difference in higher rates to Spokane, because they only charge them a reasonble rate to Seattle.

Mr. ADAMSON. You are not compelled to fight this matter out on the basis that Brother Stevens has given you. I can cite you a number of inland towns where they go through one and deliver to another at a third or half the price.

Mr. HARDY. Yes; and you can cite a thousand cases where the rate is not reasonable.

Mr. STEVENS. There is no question about that. I agree with you on the proposition that there are a great many tremendously outrageous rates. We all agree on that.

Mr. HARDY. Quite correct; and I would say, further, that any court or commission that found any rate reasonable to any point would know that it was an unreasonable thing to carry freight to a point beyond for a lower rate.

Mr. TOWNSEND. Let me call your attention to another thing that seems to me an argument in favor of you. Perhaps it is not an argument, but I simply want to call your attention to it because Mr. Stevens has suggested it. That is, that a box car, at the rate at which they are hauling it, is cheaper, as he says, by the statement of one railroad man, than a barge on the water. If that is true, is it not pretty conclusive evidence that these higher rates are exceedingly exorbitant?

Mr. HARDY. At intermediate points.

Mr. TOWNSEND. And furthermore, if it is true, as you state, that they are carrying it at a loss practically for the purpose of keeping out competition, or carrying it at cost——

Mr. HARDY. I do not believe that they are.

Mr. TOWNSEND (continuing). Is it not, then, imposing a greater burden upon the other people who have to make the profit for the railroad?

Mr. HARDY. That is exactly the point I am trying to impress; and I thank you gentlemen for it. I have said, upon this proposition, that Paragould has no right to complain of a low rate at Helena, provided that low rate is not made up by recouping on her; and furthermore, she has the right to insist on equity. If the railroads haul at a certain rate to a given point that discriminates against and is to the detriment of another point, she has the right to be asked to be treated equally. Further, let me read from a gentleman whose information on this subject all of us bow to—and I do it because, incidentally, he alone touches upon the great question that is vital in this matter among all the men who have discussed waterways. We have had our great conventions; I have gone to two of them, and sat there and listened to see if I could hear, from the outcroppings of the thoughts

of those men, the remedies that seemed to me to lie upon the very surface of the ground. But Mr. Burton does say this:

Go where we will in this question of water and railroad rates, we run up against an artificial, arbitrary system of fixing railroad charges. The motto of the railroad is to get business. If a water route is established between a couple of places, the rates are put down.

I am talking about the practice in the matter; not the suggestion that you make that the rate at the intermediate point is reasonable.

Some people say, We are in favor of river improvement; we don't care if a single boat don't go on the river.

And that is what Dallas says to-day.

I can not accede to that; but, nevertheless, you are right up against the fact that money expended on water, even in preparation for navigation, does benefit the communities. Eventually we will settle that as a great economic question. On what line? On the determination of the problem, which is the most convenient and the cheapest way to carry the freight—by water or by rail? In some cases the two will occupy the same field; in others they will exclude each other; but that must be the final settlement of that question.

Some will occupy the same field, some will exclude each other, if the laws are so administered and are so framed that they can have their natural operation.

It is not worth while to make a $10,000,000 improvement in a river alongside of a parallel road in order to get that railroad to lower its rates and behave itself.

Here is the point:

There ought to be in the armory of the law some authority which would compel them, either by State or Federal authority, to make reasonable charges.

I want to call your attention here to an existing condition. A gentleman friend of mine said he took a tour up the Hudson River. I have never seen it, but they tell me it has more beauty than the Rhine; that on its placid waters there might float a commerce of billions of dollars. But he told me there was no traffic on that river except a few excursion boats for passengers. I stood on the bridge over the Red River at Shreveport, and only a little distance below that point it joins the Mississippi, where the tide water creeps up three hundred miles and furnishes even transportation all the year round; but there was not a boat on the Red River. I went down the Mississippi, and I heard the chairman of the Ohio River Association say that except from Pittsburg the Ohio River itself carried no transportation, and none was carried on the great Father of Waters. And yet he said that that river would supply the place of 50 or 60 railroads running into or through its cities. He said—and this is one reason I can not agree to the box-car proposition—that one tugboat carried down the Mississippi River a load of barges equal to 300 miles of box cars.

Mr. ESCH. No; that can not be true.

Mr. HARDY. Whatever it was—100 miles of box cars, I believe.

Mr. ESCH. It was 72,000 tons of coal.

Mr. HARDY. Yes; it was 72,000 or 62,000, I believe. Just turn that into box cars. Every man that has ever seen figures on the subject agrees that water transportation, where water transportation is possible, for the things that it can carry, costs about one-fifth of what railroad transportation costs.

Mr. STEVENS. Judge Hardy, we hear a great deal about that, and all that may be true; but as a matter of fact, it is not done. If water

transportation is cheaper than rail transportation, why is not the freight carried that way?

Mr. HARDY. Gentlemen, I want, if I can, to put plainly before you the reason that it is not done, if I am right. It is owing to the fact that when Memphis starts to send a boat load of cotton down to New Orleans, the railroads say, "We will send it quicker and we will send it at 50 cents; turn off the boat."

Mr. STEVENS. No; is it not because of the fact that the railroads offer better accommodations, that they take the stuff where it can be obtained the easiest, and land it where it can be landed the cheapest and easiest?

Mr. HARDY. That is a matter of reasoning, gentlemen. Some gentleman may reach a different conclusion from what I do.

Mr. STEVENS. Is not that the fact that determines the traffic?

Mr. HARDY. Well, gentlemen, I will give you my understanding of it. Mr. Holland, who is the chairman of the Intercoastal Canal Company, the association in our State, at Victoria, stated this kind of an incident: That along the Guadaloupe, or one of our rivers, a little town—perhaps it was Nacogdoches—some years ago went into the freight traffic upon that river, built a lot of boats, and began to haul freight. He said the result was that just as soon as a few boats were put on the river from that city, the railroads lowered the rates of freight until the boatmen were left without anything to carry; and just as soon as the boats were sold for junk and taken off the river, the railroads raised back their rates. I want to tell you that that is common sense; and I want to say, further, that if the railroads up to this time have succeeded in banishing all freight from your rivers, they have acted as I would or as you would. They have sought a monopoly of the transportation of this country, which is a great necessity of our life.

Mr. ESCH. Here is a question. Suppose we do equalize conditions and give the rivers a share of the traffic. What assurance have we that the railroad companies would not absorb the river transportation?

Mr. HARDY. I have offered a bill in this House, which is reasonable and right, to prohibit or to prevent the establishment of a monopoly of the transportation on rivers. In other words, your proposition is a wise and a sensible one, and one that must be looked to in the future. When you prevent railroads from killing water transportation, their next step will be to own it. But whenever you get to that proposition, then come with your antitrust legislation and your antimonopoly legislation so as to prevent that, too.

You can not kill all the snakes in a nest at one time, and I mean no reflection upon railroad men when I speak of their monopoly and of their oppression. And, gentlemen, I want to call your attention to this:

In France they have gridironed that country with canals. In Germany they have done the same. All those countries, and likewise Holland, are traversed by great waterways, like the arteries or the blood veins in a man's body. One of these railroad men, in the speech that I read here, said that he was amazed in traveling over that country to find the little canals laden from end to end with the floating boats carrying the transportation of the country. But here, by some means, by the operation of a natural law of self-

ishness, the railroads have sought (and sought as I would or you would in their place) to kill all competition that might force them down, and to enlist in their behalf the representatives (unconsciously influenced, from self-interest) from every big city in this land that is enjoying discriminatory rates in its favor to-day, even cities like Omaha, where not a boat floats or could float without some improvement upon the river. They give that city great advantages over an inland town like Lincoln, for example.

Mr. STEVENS. Under the beneficent system that they have in France and Germany, do you know how the freight rates to those interior towns in France and Germany, where there is no competition and which are without the waterway service, compare with like service for like places in the United States?

Mr. HARDY. As to expert knowledge, perhaps I am unable to answer you, but I want to give you a little suggestion. The railroad men claim that the freight rates in America are the cheapest on earth, and they give you the per ton per mile rate of seventy-five-one-hundredths of a cent, or of 7 mills, I believe, in this country and show you that it is 1¼ cents in Germany and in France. But I want to tell you that in publishing their works as the shrewd attorney presents his best foot forward, they fail to call attention to the fact that the average haul in this country is nearly twice as long as it is in those countries, and we all know that when you haul a commodity 200 miles the per ton per mile rate ought to be down to possibly nearly one-half. Not only that, as I understand it, but in this country they have included in their railroad rates the charges for hauling coal and rock and slack and brick and cement and logs and those coarser, cruder, cheaper articles that are hauled by water in Germany and in France. The result is that they make a comparison of their crude ballast and slack and their long haul here with the haul over there of the finest material that goes, and then they show a little lower rate for America than they show abroad.

Mr. STEVENS. I do not think that comparison is fair, but I was not asking you that. You understand that in the interior towns all the stuff has to be carried by rail.

Mr. HARDY. Yes.

Mr. STEVENS. Some of the continental rates includes delivery, which is not done here; so that I agree with you that that comparison is not fair. But what I want to get at is, have you any information as to circumstances that are identical as far as they can be as to the interior points in France or Germany, where they have to get all of their traffic by means of rail?

Mr. HARDY. I should say not. Why, in the speech of Mr. Jusserand, I found him to echo the sentiment that had found lodgment in my own mind for a good while, when he said that the railroads are always in antagonism to water transportation; and I find that same sentiment cropping out in the speeches of different men whose attention was not directed as mine has been to this particular point.

Mr. STEVENS. Professor Mayer—which Mayer was it?

Mr. ESCH. B. H. Mayer.

Mr. FORT. The one from Chicago University.

Mr. STEVENS. Prof. B. H. Mayer said that such rates were cheaper here than they were in Germany or France.

Mr. HARDY. I do not know about that, Mr. Stevens; but I do know that the average rate in that country, if you will take the same class of freight, is not what they say it is here, higher, but lower.

Mr. TOWNSEND. I will state to you, too, that Prof. B. H. Mayer is up against Professor Mayer, of Wisconsin, as I understand it.

Mr. ESCH. There are two Mayers—B. H. Mayer, of the University of Chicago, and Prof. Hugo Mayer, who is the chairman of our State railroad commission. They take opposite views of that matter.

Mr. HARDY. I will tell you, gentlemen—I have endeavored to avoid detail as much as possible, because I know that you can find a thousand different statements on every question of detail about railroad transportation rates; but I want to call your attention to some general facts.

Mr. KNOWLAND. I would like to ask you one question here that enters my mind. I am from California, and the railroads make special rates on our fruit to land it in the New York market. Would not this measure of yours interfere very materially with that?

Mr. HARDY. Not if they were only required to make pro rata rates, or no greater rates on fruit from other places to the New York market. In other words, what I am after is to prevent a less charge for a long distance than for a short distance on the same kind of commodity and the same kind of shipment. It would not interfere with the fruit traffic at all.

But, gentlemen, I fear I am taking too much time, and I want to hasten and say a few words in conclusion.

Mr. ESCH. Before you do I would like to state that I am interested in river navigation and in increasing it. I live on the banks of the Mississippi, which is paralleled, as you know, on both shores, from St. Paul to New Orleans, by the railroad.

Mr. HARDY. Have you any shipments on the river in your country?

Mr. ESCH. It is slowly developing. We had a great shipment of course of lumber, logs, and so on—an enormous shipment, going into the millions of tons. But here is the point—in trying to stimulate river navigation our people have found this to be the case: Although we can beat the paralleling roads on down-river shipments, we have not anything to bring back in our barges; and we can not bring anything back in barges against a 3-mile current. Would we, therefore, be helpless, and have to abide by the rate on coal, for instance, fixed by the railroad, or would we be entitled to the accommodation the river would give us?

Mr. HARDY. As I understand you, according to your understanding the river can not compete with the railroads at your point?

Mr. ESCH. Coming upstream with barge freight.

Mr. HARDY. Then I do not see that it would interfere with the railroad rates at all, or induce the roads to reduce them at all.

Mr. ESCH. That is the practical proposition which may meet shippers on more than one river.

Mr. HARDY. The proposition is, I maintain, that if the river can not haul freight any cheaper than the railroad, it does not interfere with the railroad at all. There would be no obstruction there at all. That would just amount to saying that it is foolish for the river roads to reduce their rates at a river point, because the river could not compete with them anyhow.

Mr. HUBBARD. Let me ask you whether you have river traffic in steamboats?

Mr. ESCH. We have a packet line that goes from St. Paul to St. Louis.

Mr. HUBBARD. So far as that class of freight is concerned, could they compete with the railroads?

Mr. ESCH. I think they could compete with the railroads on the small shipments, but as to the coarse freight that the Judge has been speaking about, like coal, for instance——

Mr. HUBBARD. Of course, that is the great bulk of it.

Mr. ESCH. Yes; they have found from experience thus far that they can not make any lower rate and live as against the railroads.

Mr. HARDY. Hypothetical questions of course admit of only hypothetical answers, and I will simply say that practical experience has domonstrated that in Germany and in Holland and in France the waterways do carry all this coarser and cruder stuff.

Mr. HUBBARD. Yes; but they are canals, without much current in them.

Mr. HARDY. A great many of them are canals, but they go down the rivers, too, I presume. I believe myself that it would cost more to improve the Mississippi River in proportion than many a smaller stream. Nevertheless, the Mississippi would be the source of a thousand canals and connects with any number of minor streams that run into it. But even if your rivers were all out of existence, I want to know why it is that these roads reduce their freight on river points if it is not to prevent and kill competition on the river?

Mr. STEVENS. Right on that point let me reply to what Mr. Esch has said. I am somewhat familiar with transportation on the Mississippi. There is a packet line on the Mississippi from St. Louis to St. Paul. The freight rates on that packet line average about 33 per cent less than the rates by rail during the summer. The roads during the winter add, I think, about 5 cents a hundred—that is just a matter of recollection—on some classes of goods when there is not navigation over the time when there is navigation. The roads that run along that river, parallel with the river, as I say, charge 33 per cent more on the average than the water rate; but the rates of the railroads that parallel that river, the Milwaukee & St. Paul and the Burlington, are from 20 to 30 per cent higher for similar distances running away from the river. That is to say, the roads that parallel the river, where there is water competition, charge about 20 to 30 per cent less than the roads that are away from the river, for similar distances.

Mr. HARDY. Their purpose is just what it is in putting a rate of 17 cents a hundred on cotton from Memphis to New Orleans and 35 cents a hundred from Corsicana to Galveston. In other words, gentlemen, all over this country——

Mr. STEVENS. Is not that legitimate?

Mr. HARDY. I think not.

Mr. HUBBARD. The question is whether it is properly described by the word "purpose." May it not be a necessity to the railroads?

Mr. HARDY. The roads say that a necessity to them is to get business. I have not got it exactly in my mind, but last summer, or some time not long ago, I saw a notice in the newspapers to the effect that the Southern Pacific had asked permission (I do not know why) from

the Commission at New Orleans to reduce its rates on cotton from Houston to New Orleans, nearly 400 miles, from 18 to 12 cents a hundred pounds. They are carrying it at 18 cents there now, while for a less distance they charge us, right in Texas—that is, only Louisiana and Texas combined; but in Texas, for a less distance, they charge us 55 cents. The road from Houston to New Orleans is a much more difficult road to keep up. It runs through a swampy country. It is a road where the bed and everything is necessarily more expensive. Our country is a fine country to build a road through. But they swear by all that is good and holy that it would bankrupt them if you were to reduce to 50 cents the freight on cotton from Corsicana to Galveston; and yet they are hauling it 400 miles from Houston to New Orleans for 18 cents.

Mr. STEVENS. If that be true, if it would bankrupt them, how have we any authority to compel them to haul it any cheaper?

Mr. HARDY. I do not believe it would bankrupt them.

Mr. STEVENS. I know; but if you can prove that, you have a right of redress through your commission in Texas. You say you have all the law you can have. If that is true, if you can reduce it, why do you not do so?

Mr. HARDY. I do not want to charge public officials with failing to do their duty. You might just as well say that there are a great many things that could be done that have not been done. The fact of the matter is this is too big a matter for a commission to try to handle by a thousand regulations. That is one reason; but that is not all.

Let me tell you what Governor Broward said, and this is but another illustration: The St. Johns River is a navigable stream, and boats floated upon its surface, carrying a great deal of freight, until a parallel railroad came along. The freight rates on that road were so reduced that the boats were driven off of the river and the landing places abandoned. Mr. Burton says, in another section of his remarks, which I have not read to this committee, that that is a common practice—for the railroads to reduce rates wherever there is a wharf, landing machinery, and unloading machinery, until they are abandoned and the machinery is thrown away, and then the rates are raised back.

Mr. Holland gave a statement of a case in Texas. I can show you all over this country the same thing. The St. Johns is abandoned; the Hudson River is abandoned; the Mississippi River is abandoned; the Missouri River is abandoned. Every stream in this country is practically abandoned except for little, short hauls or local places like the haul from St. Paul to St. Louis.

You say that these roads can show that these are reasonable rates. Gentlemen, it sounds demagogical to make an argument along the line that I propose for a little while to make; but I say that the railroads as a whole have not charged the people of America reasonable rates upon their freight transportation. Why? Because out of the profits wrung from the unjust rates that are imposed upon the people billionaires have builded up fortunes in a lifetime that rival the riches of Crœsus and that make the estates of crowns grow small. When a Harriman goes in a night through a combination and buys a majority of the stock of the Chicago and Alton Railroad, and then issues bonds on it, and then, as a director of the road, sells

those bonds to himself and a syndicate at a certain per cent, and then turns around through that syndicate and sells them again at another and a large profit, putting in the pockets of that syndicate all the way from ten to thirty millions of dollars, and does it in three nights' time—I speak figuratively; I do not know the exact time—somebody pays for those millions of dollars that go into the pockets of your reorganizers and your manipulators. And the time has come in this country when Congress, if it has the proper intelligence, shall stop this kind of wrongful oppression of the people through unjust rates.

Mr. RUSSELL. Judge, when you get through, I want to ask you a question about this section 4.

Mr. HARDY. All right.

Mr. RUSSELL. Have you ever examined the second clause of section 4 with a view of ascertaining whether or not it has ever been the subject of construction by the courts or not? I refer to the section that reads in this way: "But this shall not be construed as authorizing any common carrier within the terms of this act to charge and receive as great compensation for a shorter as for a longer distance?"

Mr. HARDY. No; I do not suppose that ever has been done.

Mr. HUBBARD. Does not the proviso of this act extend back so as to affect that section as well as the other?

Mr. RUSSELL. I will just read the proviso in connection with it.

Mr. HUBBARD. If you please.

Mr. RUSSELL (reading):

Provided, however, That upon application to the Commission appointed under the provisions of this act, such common carrier may, in special cases, after investigation by the Commission, be authorized to charge less for longer than for shorter distances for the transportation of passengers or property; and the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section of this act.

Mr. HARDY. That is the late act.

Mr. RUSSELL. That was in the old act, too.

Mr. HUBBARD. That leads me to ask Judge Hardy whether his purpose would be accomplished more directly simply by repealing that proviso in section 4?

Mr. RUSSELL. It strikes me so.

Mr. HARDY. That latter proviso?

Mr. HUBBARD. Yes.

Mr. HARDY. Of course that is just what my bill does.

Mr. HUBBARD. I did not so read it.

Mr. RUSSELL. I do not think it does so in terms.

Mr. HARDY. Read the law as it is; that is what I want.

Mr. RUSSELL. If I understand your contention, to put it in a concrete form, you do not complain that the railroad carriers ship freight, say, from St. Louis to Memphis as cheaply as they do from St. Louis to Paragould?

Mr. HARDY. If they only did that, I would be willing to let it go.

Mr. RUSSELL. Your complaint is that they charge more for shipping freight from St. Louis to Paragould than they do for shipping freight from St. Louis to Memphis?

Mr. HARDY. To Helena, we will say.

Mr. RUSSELL. To Helena, then, to change the towns. That is your contention?

Mr. HARDY. That is my contention, and that is the only proposition I make.

Mr. RUSSELL. Under the section I have just read, would they have the right now to charge——

Mr. HARDY. To charge more for a shorter distance?

Mr. RUSSELL. To charge as great a compensation for a short distance as for a long distance?

Mr. HARDY. I do not know whether they would under your construction of that law; but I know that they do under the holdings of the court and the Commission and everybody else.

Mr. ADAMSON. Let me ask whether or not the short distance is included in the long distance there?

Mr. HARDY. Read the section you had reference to.

Mr. RUSSELL. The whole of section 4 reads in this way:

That it shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance——

Mr. HARDY. Yes; that is my bill exactly. Down to that point it is my bill.

Mr. RUSSELL. Now follows the section I have just read you—

but this shall not be construed as authorizing any common carrier within the terms of this act to charge and receive as great compensation for a shorter as for a longer distance.

Mr. HUBBARD. Does not that, by inference at least, extend merely to the case of a shorter included within a longer distance? Is it not simply a reservation from that first clause, being confined, however, to the same sort of a case?

Mr. RUSSELL. I confess that, as far as I am concerned, it is confusing to me; and from reading the decisions I have read, it looks to me as though the courts in construing this clause, "under similar circumstances and conditions," have not taken the latter part of this act into consideration at all.

Mr. HUBBARD. Permit me to say that if the effect of that language in the first clause, "the shorter included within the longer," extends to and is included within the second clause, that second clause, I think, would not reach the case here suggested, which is a haul in some other direction entirely away from the river.

Mr. HARDY. No; I do not include anything except where they haul over the same line, in the same way, and include the same distance.

Mr. RUSSELL. I know that that is your bill. Judge Hubbard was alluding to the construction placed upon this clause.

Mr. HARDY. If you will let me answer Mr. Russell's proposition, I think that the courts have held that that language, "provided conditions are similar," goes all through the whole section, and lets them charge either a greater or the same price for a shorter as for a longer haul, subject to whatever the conditions are. If the conditions are not similar, they can charge the same price for a short haul that they do for a long haul, or a greater price. But if the conditions are similar, they are not authorized under that law to charge as much

for a short haul as they do for a long haul; and if the conditions are similar they are not authorized to charge more for a short haul than they do for a long haul. But conditions are never similar.

Mr. RUSSELL. Your idea, then, is that in construing that language, "under similar circumstances and conditions," it is made to relate to both clauses?

Mr. HARDY. The "nigger in the wood pile" is that little expression, "provided conditions are similar."

Now, gentlemen, I think I have taken too much of your time.

Mr. HUBBARD. May I ask you one more thing? Is it possible that your proposition, when thrashed out, might finally result in a measure that would authorize the Interstate Commerce Commission to raise rates as well as to lower them—to establish a minimum as well as a maximum rate?

Mr. HARDY. I do not know. Perhaps the Interstate Commerce Commission has the authority to raise rates now. It has it in effect, because the railroads can offer to raise rates, or can apply to the Commission to raise rates, and have it permitted by a new schedule.

Mr. HUBBARD. Have you considered whether a proposition of that sort, enacted into law, might possibly afford relief, at least so far as the present effect on river transportation is concerned?

Mr. HARDY. I believe that the Commission has now the authority, upon the application of the railroads, to raise the rate between two points.

Mr. HUBBARD. Against their wish?

Mr. HARDY. I do not think it would ever be against their wish, if they were always required to raise them all along the line or lower them all along the line. But the great point is that the railroads would not want to raise their rates at a place which might let in water competition and not be permitted to raise them at other places. You see, the great point is that——

Mr. KENNEDY. But the idea would be that the Commission could raise the rates along the river where they competed, and lower them a corresponding amount on the lines that were not competing.

Mr. HARDY. The only interest I can conceive of against the railroad that would apply for the raising of a water-point rate would be that of the boatman. The boatman might come and ask that the Commission raise the rate from Memphis to New Orleans on cotton.

Mr. KENNEDY. The boatmen were the ones that presented this matter to my attention, and it is that that leads me to ask this question. They appeared before this committee with that very contention—that the railroads were unfairly driving them out of business.

Mr. HARDY. They are right about the unfairness of it.

Mr. KENNEDY. That was at the last session, I believe.

Mr. HARDY. I want to suggest this, that if the railroads were not permitted to recoup themselves for low rates at Memphis, they could not compete with the boat transportation on the river; but in order to kill transportation on the river they lower rates at Memphis and raise them at intermediate nonriver points, to recoup themselves and prevent a loss. The result is that they drive the boats off of the river, and the boatmen have a just complaint at the low rates. But I say this: If the railroads can lower their rates all along their

line, and then beat the river in cheapness in the transportation of freights, the river man can not complain.

It is the old trust question; it is the old Standard Oil question. In Kansas the legislature passed a law forbidding the Standard Oil people from lowering their price for oil at a point where they met competition unless they lowered it all over the State. It was a wide stretch of the antitrust idea; but I want to tell you that that is simply the river-competition idea—that railroads can recoup themselves by excessive charges at one place in order to lower rates and kill transportation at another.

The Standard Oil people have a thousand different prices, or have had in the past, for different places. When they lower their prices at a place where an independent refinery is starting its commodities into the traffic of the community, they raise them at some other place to make up the loss while they throttle the victim they are choking to death. And the railroads in this country have throttled river transportation by lowering rates at river points, and they have been recouping on the interior and helpless points. All over my State we are those that bear the burden. Actually, in our lumber matter, the railroads levy upon the people of Texas a tax, a contribution amounting to from $2 to $5 a thousand feet, in order to enable them to carry on the war; and our long-leaf yellow pine has to enter into competition on unequal terms with the white pine and the other pine from Illinois and those places. The Texas people pay a tribute to the lumber mills and the railroads, who combine, if I can judge by circumstances.

And I want to tell this committee another thing that is a fact: When the State railway commission met in Texas last year to undertake to reduce rates on lumber to points in Texas they were met by the representatives of the railroads, and arm in arm with the railroads' attorneys came the representatives of the great lumber mills in Texas resisting a reduction on freight on lumber over roads in Texas to Texas points. Why? Because Texas was paying the tribute in the additional price she paid for lumber to enable Texas mills to enter the wider field of competition in the black lands of the West. Our great mills down there would have glutted our market, perhaps, and we would have gotten no lumber, but by means of cheaper rates to Cairo the yellow pine goes out into a wide and exhaustless field where the demand is greater than the supply; and our lumber went up from $18 a thousand about 1900 to thirty-odd dollars a thousand, the highest being in 1900 about $24, and the highest-priced lumber now being $45 a thousand. It cuts us both ways; and all we want is simply that our little interior towns shall not be discriminated against; that they shall not haul a carload of stuff right through our town and charge less for it than they do to haul it to our town; that they shall not do more work for another than they do for us at twice the price, or at the same price.

Mr. Chairman and gentlemen, as I said, I am sanguine; and I can not help looking at the proposition that twice two is four; I can not help thinking that half an apple is not bigger than a whole apple; I can not help thinking that the shortest distance between two points is a straight line, and that it is always nearer to a point than it is beyond a point; and that there ought to be some standard by which the value of the service performed shall cut some figure in regulating

the rates charged. But in our railroad system the value of the service performed cuts absolutely no figure, except where it has been required to do so by the operation of some rule of the Commission, which feebly and faintly, like the glimmering of a far-distant star, is seeking to shed some light upon the unjust and oppressive rates that all over this land have been levied upon the people, and from which such fortunes have been builded for the few as shock the manhood of the many.

I do not want, in this country, class to be arrayed against class. God forbid that I should ever say anything that would make one man, because he was poor, in his heart contemn or despise another simply because he was rich. But I do say that the time has come in this country when justice should be given to every section, and discrimination between places as well as between men and parties, Mr. Chairman, should be prevented.

STATEMENT OF HON. JOHN T. WATKINS, REPRESENTATIVE FROM LOUISIANA.

Mr. WATKINS. Mr. Chairman and gentlemen of the committee, in appearing on behalf of this bill, H. R. 15855, it is not my desire or intention to make any argument at all. This bill was introduced by special request on the part of the lumbermen and the wholesale and retail associations in my district, and I have a number of communications from them. I will ask permission to file them, and it will save time and facilitate matters a good deal if the Chairman will grant me this request. I will simply explain what the bill means, and let these communications be filed as a part of the record.

I will hand over first to you a communication from the Shreveport Traffic Association; second, a communication from the Globe Lumber Company; third, a communication from the Texas and Louisiana Sawmill Association. I have here also another one in unsatisfactory and awkward shape, largely composed of a newspaper clipping, from the De Soto Land and Lumber Company and the S. H. Bullinger Lumber Company.

(The first three papers above mentioned will be found at the end of Mr. Watkins's statement.)

The proposition is simply this, Mr. Chairman and gentlemen of the committee: Section 2 of the railroad rate bill passed in 1906 amends section 6 of the original bill by stating that whenever it is desired by a railroad company to make a change in the rates there shall be a list of the rates posted for thirty days in the place of business of the railroad company, in the stations, etc., and that notice shall also be given to the Interstate Commerce Commission. The complaint made by these people whom I represent in filing this bill is that they have no opportunity of protesting and suspending the fixing of these rates after the lapse of the thirty days. They have no right during that term of thirty days to make a protest which will enable them to suspend the fixing of those rates after thirty days. The Interstate Commerce Commission is not aware of the conditions in a great many sections of the country, and when application is made for a change of rates they simply wait until the thirty days have expired, and if they have before them in the meantime anything which will justify them in refusing the change in the rates they do so. But in a large

number of instances they have no data before them which would justify them in refusing a change, and on account of this want of information the change is allowed to go into effect. If the protest is made in the meantime, and the thirty days expire, and the rate has already gone into effect, then these persons who are interested, although they may have made the protest beforehand, have to wait indefinitely for the purpose of getting what they are entitled to by having the rates lowered.

All these facts are set forth so fully and so conclusively in these protests which I have filed that I will make no further argument on the proposition, unless there is some question which some member of the committee desires to ask.

(The papers submitted by Mr. Watkins, as above stated, are as follows:)

SHREVEPORT TRAFFIC ASSOCIATION,
Shreveport, La., March 3, 1908.

In re House bill 15855, by Mr. Watkins, amending the act to regulate commerce by requiring carriers to give notice of proposed advances in rates and not permitting same to become effective until after hearing, when protests are made.

The foregoing is in substance the purpose of the bill, although not a literal statement of the title; its object serves but one purpose, and that is to give the Interstate Commerce Commission supervision over rates and changes in classifications or other devices whereby advances in rates are accomplished, before the changes are made. In other words, the Commission is authorized to pass upon the rate or classification or other rule or regulation effecting an advance in rates and determine whether same is reasonable and ought to be permitted.

Under the existing methods and the present law the carriers are allowed to make such rates, change classifications, or do anything else in the way of advancing or reducing tariffs, just as they see fit, regardless of what interests may be affected or what losses may be entailed where contracts have been made predicated upon the existing rates.

After the carriers have thus acted, the shipper may appeal for a restoration of the former rate; he may plead that the new tariff is unreasonable, but during the interval between his protest and the hearing and order of the Commission, he and others have been paying to the carriers the advanced rates on moving shipments.

With the adoption of the amendment to the act to regulate commerce which is now being considered, the Commission may prevent the adoption of rates and the consequent losses to shippers by determining their reasonableness before they become effective; the shipper or other party at interest, in a sense, enjoins by his protest the putting into effect of an advance in rates until due hearing has been had and the reasonableness of the new rate investigated by the Commission.

The Interstate Commerce Commission has on numerous occasions announced the dictum that where carriers voluntarily establish rates for the transportation of freight and such rates remain in effect a length of time they shall be considered reasonable, so far as the carrier is concerned, and the burden of proof is upon the carrier to show a reasonable and just cause for advancing such rates, whenever the advance is put at issue.

This is a wise and proper position to take, and whenever a carrier seeks to advance an established rate which they have put into effect and that advance is protested against by the public whose interests are affected by the proposed change, it is fair and equitable that this presumption of reasonableness should stand against the carrier, and such rate in effect being prima facie reasonable the carrier should be held to show some valid and satisfactory reason for an advance or increase in the rate.

There can be no question that the business interests of the country demand stability in freight charges, not only that stability which means an absence of rebating, discrimination, and undue preference, but that broader and greater stability which means that rates shall be established on a fair and reasonable basis and when so established shall not be altered or, particularly, advanced on slight pretext—that they shall not be advanced except there be reasonable grounds justifying an increase.

It is inevitable that in the fixing of rates of transportation between points all over the country, in all directions, and between the various points reached by the different railroads, that there should be instances of discrimination and unfairness; that there should be unreasonableness both in the rates themselves and in the relative adjust-

ment as between competing localities. These inequalities may be removed by the carrier voluntarily, or by order of the Commission after due hearing and investigation.

It would avoid to some extent the creation of additional causes of complaint if the proposed advances in rates suggested by the carriers were first investigated before approved by the Commission.

The railroad commission of Louisiana has adopted the policy of permitting its secretary to grant authority to the carriers within the State of Louisiana to reduce rates without a formal hearing on the application for authority. No rates within the State can be changed without the authority of the commission first obtained. The discretion of the Secretary, however, is limited to issuing authority for reductions—he can authorize no advances in rates. Applications for advances must be passed upon by the commission in session before authority is issued, and the carrier must show some good reason for asking it.

The carriers are therefore denied the right to indiscriminately change freight rates within the State of Louisiana.

On interstate traffic the conditions are very differently arranged under the present laws. Competition between carriers is disappearing—it has been for some years. Rates are established and maintained by combinations.

Only a few years ago the railroads in the official classification territory got together and decided they wanted more revenue—not that they needed it, but wanted it—and by concert of action the classification was changed, making material advances in many articles, accomplishing increases in rates by placing numerous articles in higher classes. The increases were made on such articles as could stand the increase, according to the opinions of the carriers' representatives, and not with consideration as to whether the different articles were placed on a basis relatively fair as compared with other articles of like nature, or whether or not the rates then in effect were reasonable and just.

The Interstate Commerce Commission reports for the years 1900 (pp. 14 to 21) and 1899 (pp. 6, 7, and 8), containing as they do interesting reading matter on this subject, show how easy it is for the railroad companies to disarrange the rate adjustment of the country.

In that instance, how much better would it have been for the public to have been advised of the proposed changes, to have had opportunity to protest against unjust discrimination in the changes suggested by the carriers, and to have, if necessary, prevented the putting into effect of many of these advanced rates by filing a protest before the Interstate Commerce Commission and demanding a hearing and investigation by the Commission of the reasonableness of the increases in rates.

What was done on that occasion can be done under the present law, except that instead of giving only ten days' notice to the Commission, the carriers would now have to give thirty days.

The function of the Interstate Commerce Commission should be to protect the public from unjust and unreasonable charges for transportation not only by undoing what has been done, but by preventing by a wise and judicious supervision what is attempted.

It ought not to be necessary to wait until the damage is done and then have the public, through some complaining shipper or receiver, file a suit before the Commission to annul what the carriers have done; the old adage "an ounce of prevention is better than a pound of cure" finds its application here.

In these days of big transactions, extensive contracts, and narrow margins the freight rate is an important factor in determining the bid of the contractor, the market of the buyer, the quantity of traffic between particular localities. It should not be treated lightly. It should take something more than the mere dictum of a traffic manager to increase the charges made on traffic. The public as it is represented by the contractor who has made his bid and expects to ship his goods to fill that contract, the buyer who has placed his order for goods from a certain market because the rate from that market is more favorable to him, should not be made to suffer the injury which might result to them just because some carrier elected to increase the rate of freight without just cause or valid reason therefor.

Under present conditions the contractor makes his bid to furnish his goods at a certain price; he has obtained the freight rate and figured his bid accordingly. He begins the movement of his traffic, and before it has all started on its way to destination the freight rate is changed. He stands to lose the difference between the rate at the time of his bid and the rate in effect when his shipments move.

This is not an occasional occurrence; it happens every day, and there results a wrong to the shipper who has made his contract or sold his wares with faith in the stability of the rate of charges for transportation in effect at that time, a wrong which could have been prevented had opportunity been afforded the shipper to protest against an advance in the rate.

In conclusion every step in the direction of securing stability in transportation charges is a step which should commend itself to all who carefully consider the transportation problem. In the days when rebates were had for the asking and any shipper with a car or two of freight could get as many different rates as there were carriers able to handle the traffic; when different shippers in the same community got different rates, according to the quantity of their traffic, from the same carrier; when nobody knew what rates were paid by his neighbor, and he who may have thought he had an inside figure afterwards discovered that William Jones on the same day had 2 cents better on the same article from the same carrier, the great majority of conservative and solid business men began to realize that rebating was an evil rather than otherwise. It dawned upon the shippers and receivers of freight that it was far better to have rates established on a reasonable and just basis—reasonable and just to the carrier as well as the shipper—and when so established, maintained.

The principle is the same to-day; charges should be fixed with due regard for the interests of all concerned, and when so fixed they should remain until reasonable grounds exist for a change. Nothing in these expressions is intended as a condemnation of the carrier for advancing rates; the railroad companies are entitled to share in the prosperity of the country just as other industries do. All intended is to put a check on indiscriminate increases in transportation charges. To grant the Interstate Commerce Commission supervision over rates before they are made effective; to prevent the carriers from establishing rates which are objected to by the public on the ground of unreasonableness; to afford the public opportunity to protest before the injury which would result from the adoption of unreasonable rates is accomplished.

Considered from the point of view herein set forth, which we think is fair and reasonable, the amendment to the act should receive the favorable report of the committee. It is fair alike to the shipper and to the carrier. We have of course as a shipper considered the amendment as it will affect freight traffic.

Respectfully submitted.

EMERSON BENTLEY,
Secretary Shreveport Traffic Association.

YELLOW PINE, LA., *March 2, 1908.*

Hon. J. T. WATKINS,
House of Representatives, Washington, D. C.

DEAR SIR: We acknowledge receipt of your favor of February 26—subject, your bill H. R. 15855. I note what you say, and the reasons to be urged in my case consist of a condition brought about (I have been informed) by a disagreement between the Santa Fe Railway, Cotton Belt Railway, and Texas and Pacific Railway with reference to a division of a then existing through rate.

At present, it is within the power of the delivering road to retain such part of the through rate as they may elect, pending an agreement for a division of same. In this instance (I have understood) there was a disagreement over rates on cattle and grain, which finally caused the Santa Fe Railway to take the position that they had enough lumber mills on the line of their road to supply the lumber dealers on their road, and that they would not handle lumber traffic originating on other lines except for such a large per cent of the through rate that the other lines could not participate in the traffic without losing money, thereby compelling the other lines to cancel their through rates. This was done. As a consequence, many shippers who had accepted business on the basis of the then existing rates were compelled to pay 7 cents per hundredweight, or an average price of $1.75 per 1,000 feet more freight on business they were morally obliged to fill than would have been the case had the Santa Fe been compelled to let the then existing rate stand until a substitute rate had been proposed and approved.

The lumber dealers on the line of the Santa Fe were thereby compelled to buy from mills located on the Santa Fe. They were shut out from the benefit of competition from other mills. Mills off the Santa Fe were shut out from paticipating in the trade in the country tributary to the Santa Fe. You well know that to cater to the building trade it is necessary that a dealer be permitted to buy from nearly every section of the lumber-producing territory. One section of the territory may furnish timbers of dimension that another section can not furnish. Another section may furnish finish or other material that the section which furnishes the timber can not furnish. The attitude of the Santa Fe road in this instance compels all dealers on their lines to acknowledge a paternal attitude on the part of the railroad, and that the railroad knew better where it was best for them to place their trade, and where it was best for the mills to market their lumber, than did the mills and the dealers themselves.

I am reliably informed that the cause of the controversy was a disagreement in grain and cattle rates, and not a question of remunerative traffic, or expense of delivering a

commodity. I am quite sure that you will have no difficulty in making the committee understand that the best results to all parties will be their keeping open all available gateways, and that no trade or no territory should be reserved by the cancellation of through rates for the benefit of any one section of a producing territory.

Mr. Lynch Davison, of Houston, Tex., has gone into this matter rather further than anyone else I know of. I will send him a copy of this letter, and ask him to furnish you detailed particulars, either personally or through Mr. Oscar S. Tam, secretary Texas and Louisiana Saw Mill Association, as I believe they can furnish much that is of interest.

Yours, truly,

THE GLOBE LUMBER COMPANY, LIMITED,
J. W. MARTIN, *General Manager.*

HOUSTON, TEX., *March 5, 1908.*

Hon. J. T. WATKINS,
House of Representatives, Washington, D. C.

DEAR SIR: We are in receipt of carbon copy of a letter from Mr. Martin, of the Globe Lumber Company, Yellow Pine, La., addressed to you under date March 2. This carbon was referred to the secretary of this association by Mr. Lynch Davidson, one of our directors, for the secretary's attention, Mr. Davidson being called out of the city.

We do not have a copy of your bill, H. R. 15855, referred to in Mr. Martin's letter, nor have we a copy of your letter of February 26 to him, and therefore we are not certain of the issues referred to by Mr. Martin, but presume that they are in line with the proposed amendment to the Interstate Commerce Commission act. A copy of Senate bill 423, introduced by Mr. Fulton, is before us.

Mr. Martin has, in substance, given you the facts connected with the cancellation by the Santa Fe of an existing joint through rate with the Cotton Belt and Texas and Pacific, and which has been in process of hearing before the Interstate Commerce Commission at Kansas City (on January 28 and 29) in the case of H. A. Gorsuch et al. *v.* The A., T. & S. F. et al., during which hearing the evidence shows that there had been a quarrel between the Santa Fe and the Cotton Belt and Texas and Pacific over a question of division of a through joint rate, which resulted in the cancellation by the Santa Fe of its concurrence in the through rate as established.

We approve of everything that Mr. Martin has said. and, in addition, will state that the position of the millmen with regard to this is that they, as well as the lumber dealers in the consuming territory, are the innocent parties and suffer all the loss and damage arising out of this cancellation of through rates.

As you are perhaps aware, lumber is sold upon a basis of delivered prices, and where sales are made based upon these through rates as published in the tariffs of the carriers, it is a manifest injustice to both the seller and the purchaser to cancel and nulify the very basis upon which prices are made, for when these through rates are canceled, delivery of lumber can only be effected through a combination of local rates on the lines participating in its delivery.

The loss to the shipper in the event of a rate being cancelled on which he has based his calculation for the delivery of his product inflicts upon him a serious injury.

Orders for lumber are accepted considerably in advance of their time of delivery, and with little or no warning from the roads of a cancellation of through rates the shippers of yellow pine are unable to complete shipments before cancellation of the through rate goes into effect. and as there is a legal as well as moral obligation to comply with the contract of sale. it is easy to perceive how a loss may be sustained by the shipper without his contributing in any manner to it.

In approval of the amendment to the Interstate Commerce Commission act as proposed, we can see no possibility of an injury to any interest, for if the rates are just and equitable the carriers need have no fear of continuing in effect an established rate until its proposed change has been thoroughly considered and passed upon by the Interstate Commerce Commission before it is put into effect. And it is argued that if when a rate is in effect its reasonableness may be reviewed by the Interstate Commerce Commission under the powers now conferred upon it, that the extension of that power to permit it to pass upon this reasonableness before a proposed rate goes into effect is a wise and just provision which can injure no one at interest.

If we have not covered the subject of your inquiry, we would be glad upon receipt of a letter from you to give you any further information in support of the position taken with regard to this proposed amendment.

Yours, very truly,

TEXAS AND LOUISIANA SAW MILL ASSOCIATION,
OSCAR S. TAM, *Secretary.*

STATEMENT OF HON. THOMAS W. HARDWICK, REPRESENTATIVE FROM GEORGIA.

Mr. HARDWICK. Mr. Chairman and gentlemen, I shall promise not to detain you any longer than Judge Watkins did. The only proposition I have before this committee is a very simple one.

House bill 16074, which proposes to confer on the Interstate Commerce Commission the right to initiate a rate on its own motion, is the one to which I wish to direct your attention. Mr. Chairman, that right existed in the act of 1887, and many gentlemen thought, when the Hepburn bill, the act of 1906, was passed, that it was still preserved. I remember that the gentleman from Maine [Mr. Littlefield], in a colloquy with myself during the general discussion of that bill, advanced that contention. My recollection on that point is positive, and I have confirmed it by an examination of the record. The gentleman from Michigan [Mr. Townsend], a member of this committee, seemed from some expressions that he made to have the same idea. But it is not true that that power is now in the Interstate Commerce Commission.

Section 13 of the act of 1887 provides that whenever anybody makes a complaint—I will read you some of the language of it. After providing, first, for individual and special complaints, this language occurs:

> Said Commission shall in like manner investigate any complaint forwarded by the railroad commissioner or railroad commission of any State or Territory at the request of such commissioner or commission, and may institute any inquiry on its own motion in the same manner and to the same effect as though complaint had been made.

Mr. HUBBARD. That is the original act?

Mr. HARDWICK. That is the original act—the act of 1887. The courts held that that act did not confer anywhere the rate-making power; hence the necessity for this legislation. When we came to confer, by what is commonly and generally known as the "Hepburn bill," the power to make rates, we did so in this language. I read from ection 15:

> That the Commission is authorized and empowered, and it shall be its duty, whenever, after full hearing upon a complaint made, as provided in section 13 of this act—

That is the section I have just read from, the original section of the act of 1887; but you will notice the language in this section 15, which was a part of the Hepburn bill, was that "whenever, after a full hearing upon a complaint made;" it confined it to a complaint made. I called attention to that difference in the law, and I called attention when this bill passed in 1906 to the fact that if it passed in this form it was my judgment that the power of fixing a rate upon its own motion would no longer exist in the Commission. Of course it never had existed, under the decision of the courts, but it would not have the power which Congress thought that it had conferred in 1887 to fix a rate on its own motion.

The Commission, in a statement issued by it on June 3, 1907, which some gentleman used in the hearing to-day, expressed the opinion that they could not, except on a complaint made, undertake to fix a rate at all. The President of the United States, I am informed, was so advised by his Attorney-General, and it is a fact that in his message of January 31, 1908, this year (the fa nous message that we all listened

to with so much pleasure) he included a specific, direct recommendation that the act of 1906 be so amended as to allow the Interstate Commerce Commission to fix a rate, not only on hearing, not only on complaint made, but on its own motion.

I am going now to say just a word on the merits of that matter. My State is one of the first States that adopted a railroad commission law. It has always been the law, and is to-day, in the State of Georgia, that any railroad rate can be fixed by the commission on its own motion without waiting for a case or a party plaintiff.

Mr. HARDY. It is the same way in Texas.

Mr. HARDWICK. The same thing is true in Texas. The same thing is true in a great many States of the Union; and the same thing is true, or was true from 1887 to 1906, in the United States—that is, every power that the Interstate Commerce Commission did have that was granted to it could be exercised just as well after hearing on its own motion as after a hearing upon a complaint made with a regular party plaintiff.

Just a word now, gentlemen, as to the necessity for this amendment. I do not suppose I need make much of an argument on that point when I am backed up by a recommendation from the President, and when the Attorney-General, if I am correctly informed, the Department of Justice, and the Commission all agree that the power no longer exists. Ought it to be conferred? We thought so in our State; they thought so when the act of 1887 was framed, for this reason: The average shipper, the small merchant, the man of small means generally will never know, in the first place, when he is being discriminated against. That is one of the objects of having the Commission. Let the Commission be there to investigate and to act for the people in finding out, first, what are the facts; and second, if they find out that wrong is being done to anybody, to any person, or to any place, it is their duty to institute public proceedings, in behalf of the public, against these corporations that are guilty of these wrongs.

Mr. HUBBARD. But as busy as they are, would they be likely to find out these conditions except on the suggestion of somebody familiar with them?

Mr. HARDWICK. I will answer your question, Judge; I think I can do it, because, as you all see to-day—that is, you know from what you have heard all the time—whenever they start into the investigation of one complaint, a thousand different things come out on the hearing. They will start to investigate, perhaps, rates in some particular section, and they will see in the course of that investigation a thousand injustices that are being perpetrated. My average constituent or your average constituent or anybody else's average constituent has to wait, particularly the little fellows where there are no associations and no organizations, until he hires a lawyer to come up here and go, first, before the Interstate Commerce Commission, and second, before the courts, perhaps (because the railroads fight); and until that is done there will be no cases made and no complaints made.

The CHAIRMAN. Do you think that would be necessary in any event? Would not a letter containing the complaint be just as efficacious, and authorize the Commission to take up the matter?

Mr. HARDWICK. I will answer that question in this way: It would certainly comply with the law; but as a matter of fact, it ought to be

pushed by vigorous lawyers. If the Commissioners were to do nothing but act as judges, to conduct no investigation of their own, but simply to pass impartially on the proceedings, and if the railroads had big, strong, able lawyers, unless the complainant had some sort of representation besides a letter it strikes me he would have a pretty poor show. Besides, that does not answer the first objection I make that must have been controlling with the President and these other people—that they will not know it. My average constituent will never know that he is being treated wrongly on his interstate rates.

The CHAIRMAN. Then he is not very badly hurt, is he?

Mr. HARDWICK. I do not know whether he is or not. If a man overcharges you without your knowing it, your feelings may not be hurt as they would be if you knew it; but he has more of your dollars than he ought to have, whether you know it or not. In other words, if I am charged $5 for a hat, which is really worth only $4, I may not feel as badly about it if I do not know it, but I am $1 out just the same as though I did know it.

Mr. ESCH. Do you know to what extent, Mr. Hardwick, the Commission exercised this power under the act of 1887?

Mr. HARDWICK. My information is that under the act of 1887 they exercised it to a considerable extent. At all events, it was never questioned under the words of the law that they had the right to exercise it.

The CHAIRMAN. Oh, yes; it was; you are entirely mistaken about that. No one at that time thought for a moment that Congress was giving to the Commission power to establish rates. It never was heard of in the discussion, and it never was believed by anybody. I was present during all of those contentions. I was a member of this committee at the time the committee adopted that bill.

Mr. HARDWICK. Did not the Commission assume to fix rates?

The CHAIRMAN. They did assume to fix rates.

Mr. HARDWICK. They thought so then; did they not?

The CHAIRMAN. No; they did not at first. You will find that the first discussion of that matter was that Judge Cooley emphatically said that they had no such power; but afterwards they did, in the ordinary course of their business, indulge in the suggestion that such a rate was too high; and sometimes the railroad accepted the suggestion and acted upon it. At other times it did not; and the Commission never attempted to enforce their decision until some seven or eight years afterwards.

Mr. HARDWICK. Very true, Mr. Chairman; but, if you will pardon me just a minute, the fact remains just as I have stated it to the committee—that whatever power they had under the act of 1887, whether it was great or small, could be exercised just the same on their own motion without a case made as when a case was made. That is the point I make. In other words, they had just the same power, under the act of 1887 and under the section I have read, to act whether there was any case made or any party plaintiff, or whether they simply found out something themselves on their own motion and on their own inquiry.

The CHAIRMAN. They have that same power now with regard to everything else except rates.

Mr. HARDWICK. Except rates.

The CHAIRMAN. Yes.

Mr. HARDWICK. And now the President recommends, after careful consideration of this question—I have read the message—that the same power that they have now, as you say, as to everything else except rates, be broadened so as to include the rate-making power. That is his specific, direct recommendation. It is based on data and on a correct construction of the law, and on what he believes (and I agree with him there, and I am here to state to the committee that I do) is an absolutely necessary condition. I think it ought to be one of the chief functions of the Commission to find out when the rates are right; and if they are wrong they ought to be fixed right whether there ever is a cause or not, a plaintiff or not. The Commission itself, representing the people of the United States, ought, I think (and that is the object of my bill), to have that right.

I want to say, Mr. Chairman, just one word more, and then I will answer any questions that gentlemen ask, or yield to somebody else.

Nobody can object to the bill that I have drawn. It is the only bill of its kind, I think, before this committee—the only bill that seeks to carry out something that is recommended by the President.

Mr. HUBBARD. Does it do anything else than amend the section by inserting the words "or on an inquiry instituted on its own motion?"

Mr. HARDWICK. That is all; I just started to call attention to that. In other words, I simply put into section 15 the very identical words of section 13 in the act of 1887; and I propose to give to this Commission, in the very same language that is employed in section 13 of the act of 1887, the power to fix rates on its own motion as well as in a given cause when there is a party plaintiff. Of course I will not go into the question of the merits of the matter. It is too broad a question.

Mr. KENNEDY. Do you know anything about what the experience of the Commission has been along the line you spoke of a little while ago, of making inquiry upon some one else's motion about one case, and then discovering other like cases in the course of that inquiry?

Mr. HARDWICK. I know that only from what the Commissioners have told me.

Mr. KENNEDY. I can see readily that while inquiring into one rate they might find a lot of other things in that immediate neighborhood that were equally open to objection.

Mr. HARDWICK. One member of that body told me that that was true—that whenever they examined a case, if it was a good, big case, there would be a thousand cases, a thousand facts, that would come out.

Mr. KENNEDY. They might want, when correcting one thing, to correct the other abuses on their own motion.

Mr. HARDWICK. That is the President's idea, and I believe it is sound. I believe it would give protection to a great many people and give benefit to a great many people that will never get it unless the amendment is made.

I thank you, gentlemen, for your attention.

STATEMENT OF HON. THOMAS HACKNEY, A REPRESENTATIVE FROM MISSOURI.

Mr. HACKNEY. I wish to say a few words on the bill introduced by me, No. 17791, introduced on the 25th of last month. The purpose of the bill is, I take it, very well disclosed in its title. It provides for a uniform classification of freight.

I want to say that this is not a new matter in this country. I am not the author of the idea of having a uniform classification. It has been twenty years since this matter was actively agitated by the lawmaking or the executive body. The Interstate Commerce Commission themselves took the matter up at that time and undertook to have action taken by the railroads. The railroads took up the question of adopting a uniform classification, and after that time did get together and formulate a substantial classification which was practically agreed to, excepting by a few members of the association in this country, and I have the document here now that they offered and recommended to take effect January 1, 1891.

I want to say, furthermore, that at this time they are at work on another, trying to get it to a classification. I have been fair with the railroads in the matter of this bill. I have sent out copies of it to different ones, inviting criticisms and suggestions of amendments. Some of them advised me that they think they will have some results before a great while.

Mr. HUBBARD. Does not the Interstate Commerce Commission express the same opinion, or the same hope, at least?

Mr. HACKNEY. They have expressed the wish, but not the hope. Those with whom I have discussed the matter have the wish that it could be done, but not the hope.

Mr. BARTLETT. They did recommend, as far back as 1897, that this be done, and also in 1900.

Mr. HACKNEY. Oh, yes; along in the eighties it commenced.

Mr. BARTLETT. I noticed in the report of 1900 that the Interstate Commerce Commission (and so did the Industrial Commission) gave an instance of where the simple change in classification added an increase in freight of $155,000,000—the mere change of classification of 1884.

Mr. HACKNEY. I am impressed with the fact, since consulting and since receiving suggestions from different traffic managers, that the limitation placed in my bill for the formulation of this classification is too short. It was put in as a tentative matter. I fixed the time as October 1 when the Commission should promulgate a classification as a tentative classification, and should then give sixty days for the hearing of objections to that and revising it, and then give thirty days more for the railroads to put it in effect, so as to make it operative January 1 of next year. I am satisfied, after discussing the matter with gentlemen who have spoken candidly with me on this point, that the time is too short, and I believe that it would aid in getting results to give a little more time. I think we could in that way get this Commission a little more active and have it nerved up to accomplishing something that would be effective and give them a little bit more time to do their work.

Of course I do not figure here on having any particular classification adopted. It is not for the vindication of any railroad man's

idea; but certain it is that they can have a classification that will be operative over this country, and at the same time will make a number of exceptions to meet the peculiar conditions that arise.

As you doubtless understand, there are three classifications; and the reason that the matter is brought to my attention is because I come from a section that is on the border line—the eastern or official classification, as you understand, applying to the northeastern territory from Chicago east, north of the Ohio River; the southern, south of the Ohio River and east of the Mississippi, and the western, west of the Mississippi River.

Mr. BARTLETT. You mean by that that they have three different classifications applying to different territories?

Mr. HACKNEY. Three different classifications applying to different territories—applying to the different territories embraced in those classifications.

Now, gentlemen have suggested that they can not outline a plan that will operate satisfactorily over the entire country. I do not entertain that opinion, and I have talked with some very good railroad men that do not entertain that opinion, either. I am satisfied that whenever there is any reasonable effort made to clothe this Commission with authority and power to adopt a classification, there will be no trouble in making one classification that may be understood, not only by the shippers themselves, but by the railroad agents that have to deal with the doing of the practical work of handling shipments going over these various territories. I can not offhand give you any figures about the various differences in the classification, and I will not undertake to do so. I only speak of the fact that we have (I suppose the fact of the matter will not be disputed) the three classifications I have mentioned; the fact that the Commission has no power as yet to adopt a uniform classification; the fact that a uniform classification is necessary in order that the shipper may always understand what class his shipment is going to belong to, and in order that the local agent may understand, when he is dealing with a shipment going into other territory, just what is going to be charged at the other end of the line.

Those things certainly appeal to you, gentlemen, and appeal to any man, without his having technical knowledge of the business of the railroads.

Mr. HUBBARD. With reference to the views of the Commission, I will call your attention to their latest report, the last three paragraphs on page 20. There they seem to say, first, that the task of making this uniform freight classification is one which should be primarily left to the carriers to work out; further, that the Commission note with distinct interest and satisfaction the steps that have been taken by different sections operating under three general classifications to establish a standard classification; and in conclusion, that under the organization which is now being perfected by the carriers, material progress may be expected in connection with this important matter.

Mr. HACKNEY. Yes, sir; and I want to say to you that there was material progress almost twenty years ago. And I make the prediction right here, gentlemen, that you will not have a classification adopted and in force without having some arbitrator to hold it in force. How binding is that on the traffic associations going into it if they agree to a classification? It is not binding at all.

Mr. HUBBARD. If the carriers form it, it would not be necessary that any binding arrangement should be made, would it?

Mr. KENNEDY. There would be some obligation not to change it, would there not?

Mr. HACKNEY. What assurance have you that they would form it? They formed it once before.

Mr. HUBBARD. I did not know that you were familiar with what was stated by the Commission.

Mr. HACKNEY. Oh, certainly; I am quite familiar with that.

Mr. HUBBARD. That was what I was inquiring about.

Mr. HACKNEY. Yes. The point I want to make is that twenty years ago this matter was postponed upon the suggestion and the assurance that they were about to get ready and about to come to an agreement; and there was their agreement, and it was kicked overboard. It certainly is a matter that addresses itself to the sound judgment of every man as something that ought to be done. There will always be some railroads that will disagree; no two traffic men have exactly the same ideas. You must have some tribunal that will be fair to all interests but that will ultimately settle those differences in the interest of the general public. It is to the interest of the public, the shipper—it is to the interest of the railroads themselves.

I have in mind instances where the agent has misconceived the classification, thinking that he understood what it was in another territory, and has caused all manner of confusion and disappointment and ultimate litigation respecting it. The shipper very often makes a mistake. There ought to be no reason why they could not formulate a uniform classification, with such exceptions to the general rule as would meet the local conditions in the respective communities; and in that way you can have some regulation of freight rates, too, gentlemen.

Mr. KNOWLAND. Would there not be apt to be mistakes made in the same way in calculating tariffs?

Mr. HACKNEY. There will be less likelihood of mistakes, of course, whenever you simplify the means, the tools with which they work; and it is oftentimes quite difficult to determine the classification of an article in another territory. It is described from a different standpoint.

Mr. KNOWLAND. We have gone into that in the last few days.

Mr. ESCH. Mr. Hackney, in 1900 and 1901, I think it was, the roads in the official classification territory raised hay from the sixth to the fifth class. Of course you know that every raise of class increases the rate. That change of classification increased freight rates on hay many thousands of dollars. The case was taken into court on a decision of the Interstate Commerce Commission, and the court held that the Commission under the old act did not have the power to fix rates, but intimated strongly that if the Commission had had that power it could have held the classification as it originally was. We have now changed the law and given the Commission the power. Would not that imply that in a given case the Commission would have the power over the classification?

Mr. HACKNEY. I do not think they would have power to make the classification uniform over the country. They might have. I think you probably give them power there to deal with particular instances and conditions from a corrective standpoint only. I do not know

just the scope of your amendment. I can hardly give an opinion on it without having time to consider it; but it seems to me that you do not in that amendment clothe them with general power to require uniformity before the shipment is made.

Mr. ESCH. Of course you want a broader power to make a uniform classification.

Mr. HACKNEY. Yes. You may have clothed them with sufficient power to deal with the matter from a corrective standpoint—that is, after the transaction, to say that it ought not to have been done.

Mr. ESCH. I think they have that power now, without doubt.

Mr. HACKNEY. But that is a very objectionable way of exercising the power. If you can arrange this matter so that this thing is done beforehand, then controversy ceases; you will save difficulty and misunderstanding.

Let me repeat about the matter of time. I think, after considering the suggestions made by gentlemen who have written me frankly on this matter, that the time I have fixed at October 1, 1908, should be extended. I think that practically a year from the time this law might be passed would be early enough. It would give the railroad men ample time. I would suggest an amendment, making it April 1, 1909, instead of October, 1908, and then give as the time for hearing complaints after the publication of this tentative classification until, say, June 1, sixty days. Then give thirty days for the lines to put this classification in force, making it operative from the 1st day of July, with the power (as we understand the bill provides) for the correcting of errors at any time, either on the initiative of the line or any common carrier or the shipper, or by the Commission on its own motion.

I do not wish any matter to be dealt hastily with; but I do believe, and I make the prediction now, that unless some power over this matter is vested in the Commission you will not have a classification that is agreed on, that is uniform over the country. The same thing that arose after they had gotten the results of their work of three years, some twenty years ago, will come up again, and some of them will kick out of it. It will have to be a compromise measure. There will be some little complaint and some claims of particular localities that will have to surrender to the general good; and that is why the power must be given to the Commission.

From a practical standpoint, no doubt these gentlemen, who are now sitting in Chicago dealing with this matter, can solve the practical detail of the classification; and they can get such a classification as the committee would see was fair. If the Commission wanted to amend it, and had any cogent reason for it, they would have the power to do it, and then make their classification the one that would be the official one. If they see fit to amend the paper that is submitted by the traffic associations, they must publish the amendment in due time to give them a chance to analyze it.

Mr. HUBBARD. Your idea is that the Commission could avail itself of the benefit of the work done by the railroad officials if they chose to?

Mr. HACKNEY. That is it exactly; and that they should be given a reasonable time to do this work.

I have received a good many letters from traffic managers on this subject, but I suppose of course they were not written to go into the record, and I do not propose to read them. But the gentlemen who

have had long experience say, as a rule, that this work can be done. Most of them say that I have made the time too short; and I believe myself that I have, as I have stated to the committee. But certainly if that can be done, it will be a great benefit to the business interests of the country, the carrier as well as the shipper.

I do not propose to take up the time of the committee further.

I did have, however, a bill yesterday that the committee did not get a chance to hear. It is a very simple matter. By mistake, the Printing Office got two numbers on the same bill; but it was a bill to take away the prohibition on the giving of transportation by railroad lines to certain individuals, and making an exception of the widow during widowhood or the children during minority of deceased employees. That was brought to my attention in this way: There are three railroad divisions in my district, and I happen to know a great many of the people connected with them. One of my next-door neighbors is the widow of a division superintendent who spent his life in the railroad service; and yet she can not, without violating the law, receive transportation to go any distance. She spent most of her early life in going around with her husband over the line; and of course that question comes up everywhere.

I do not think that giving a widow during widowhood the privilege of riding on transportation, or giving minor children the privilege of riding on transportation, would affect the public interests very seriously. I do not think it would seriously affect anyone; and this bill does not, of course, make it obligatory. It simply says that nothing in the act shall be so construed as to prohibit it. It rather puts it in the language used with reference to the family of the employee and amounts to carrying that family on during its dependent period of widowhood or the minority of the children.

Of course there are a good many matters of that kind; and the act must speak for itself. The widow does not come down here; the children do not come here; but if the bill is enacted it will be something, I know, that will give a great deal of joy to the sad hearts of many a widow and infant child.

STATEMENT OF GARRETT FORT, ESQ., OF NEW YORK CITY, ASSISTANT TO THE VICE-PRESIDENT OF THE NEW YORK CENTRAL LINES.

Mr. FORT. Mr. Chairman and gentlemen of the committee, I want to speak briefly of House roll No. 9100—a bill which makes all interstate tickets unlimited as to time. But before I say anything on that question I should like, if you please, Mr. Chairman, to amplify some remarks that Mr. Black made yesterday in regard to the matter of the sale of through interstate tickets to destinations west of Chicago.

In the early part of the summer of 1907 the local fares in nearly every State west of Chicago were changed—that is, up to the Rocky Mountains. The fares in Nebraska, Iowa, Kansas, Illinois, and Wisconsin were changed, as you know; and it was a matter of literal impossibility for the carriers in so-called trunk-line territory in the East, to compile through fares based on the new fares tendered them by their western connections. I have in my hand the rate authority used by all New York city agents, the trunk-line joint tariff, which

quoted fares to some 4,000 destinations throughout the country. We were confronted by two evils, and thought that we chose the lesser. If we continued to sell through tickets at rates made up of a combination of our local rate to Chicago and the old rates from Chicago or St. Louis or Peoria out of the other gateways to the West, we were met by just complaint from passengers who were overcharged in the purchase of through tickets. We therefore concluded that the wisest thing to do was to cancel all of these rates to the West, and to compile immediately the rates to the more important points, and put those in effect at once, which we did.

We have quoted fares from New York to about three hundred important points in the West, including the junction points and commercial centers of Iowa. Clarinda, Mr. Chairman, is not quoted; but as far as the New York Central is concerned (and I should say the same condition should exist in Washington), if an application had been made a sufficient time in advance for the local ticket agent to communicate with his general office, he could have procured a through rate to Clarinda. There is no legal or other obstacle of which I am aware that would have prevented the sale of such a ticket as long as the factors in the through rate were both properly made and corresponded to the rates filed with the Commission. There was no reason why that through ticket should not have been sold, provided application was made a sufficient time in advance for the agent to get the authority from his general office, which was probably the only place in Washington where those fares would have been on file.

Mr. ESCH. That is only a temporary inconvenience?

Mr. FORT. Yes. By the 1st of July we will have all our rates lined up in proper shape. It has been utterly impossible to do it before. These rates have to be made by expert men. They are a class of clerks of whom there have not been very many in the country, for the reason that there has not been any very large demand. We have had to educate men who were competent to compile these fares. That has raised the salaries of that class of men about 50 per cent. We have had to scour the country in our own case in New York; we have had to hunt all over the country for competent rate men to come with us to work on these tariffs; and just as fast as they can be compiled they are being prepared, and will be published not later than the 1st of July.

House bill No. 9100, which proposes to make all passenger tickets unlimited as to time, will, if enacted, bring about one of two results: First, it will either build up a traffic by so-called ticket brokers or "scalpers" in the sale of such tickets; or, second, the railroads will revert to the old practice of long ago of selling tickets only to the end of their own lines. They will have to do that as a matter of self-protection; and I am inclined to think that they would choose the latter alternative. I can not conceive of any benefit that such a measure would be to anyone except the professional ticket-broker; and I will explain why:

The common and in fact the universal practice of making passenger fares to-day is for the short line between two given points to establish the rate, and for the longer competing lines to meet the rate. The longer lines, in order to protect themselves from the manipulation of their fares at intermediate junctions, will limit their tickets to a sufficient length of time to enable the passenger to reach

his destination. A concrete case, which I think will serve as an example of my meaning, is the fare from New York to New Orleans, which is $33.15, made by adding the local fare from New York to Washington to the fare from Washington to New Orleans. The New York Central, for example, sells a ticket by way of Chicago meeting the rate of the short line. The distance is considerably greater, but we very closely approximate the time that can be made through Washington. Our fastest train in connection with the fastest train on the Illinois Central Railroad from Chicago makes within twenty-five minutes as good time as is made from New York to New Orleans through Washington; and the advantages of this variety of routes to the traveling public I think are manifest. It is not necessary for me to enlarge on that.

The sum of the local fares from New York to Chicago and from Chicago to New Orleans is $43, which leaves a margin between that sum and the through rate for which the ticket is sold of $9.85—a margin sufficient to enable ticket brokers, if these tickets were unlimited as to time, to buy them in New York, use them as far as Chicago, turn them over to their correspondents in Chicago, and resell them from Chicago to New Orleans, thus depleting the legitimate and proper revenue of the carriers.

Mr. ESCH. Would it be practicable to have these tickets nontransferable?

Mr. FORT. Yes, sir; it would be practicable, and I believe that they ought to be made nontransferable.

Mr. ESCH. That would cut out the brokerage, would it not?

Mr. FORT. To a certain extent, yes, sir.

Mr. ESCH. Of course I understand that there would be more or less fraud connected with it.

Mr. FORT. Yes; but there is a further reason than that, Mr. Esch, and a more important reason, in my judgment, why this would be an unjust burden upon the carriers. It rather limits our right of contractual relations with our connections. An arrangement which might be good policy and might be required by the public to-day for the sale of through tickets might to-morrow change entirely. The conditions might change, and it might be advisable for us to discontinue that arrangement. If our tickets were absolutely unlimited as to time, we could place no practical limit upon the time when we could discontinue or interchange relations with any given line. Those tickets would be bought in blocks, and would be always out against us. We could not tell how many of them might be in the market unused; and it seems, really, an unnecessary invasion of our rights.

Another important reason is—I speak with knowledge on this point—that prior to the year 1895 the New York Central Railroad placed no limit whatever on its local tickets. That was, I think, the greatest incentive to dishonesty on the part of our employees that we have ever had to deal with. A local card ticket from New York to Utica, for example, where the fare is $5, was good as long as the railroad was in operation, and was just about as good as a five-dollar bill, and frequently changed hands about as often as a five-dollar bill. We were obliged to prosecute our conductors frequently. Conductors are just as honest as any other class of men; I am making no reflection, and I do not want to make any reflection, on their

honesty; but, like all other men, they are susceptible to temptation. Very few of them were dishonest, but enough were to seriously injure our revenue. They had a market for these unlimited tickets through the scalpers, and they would turn them over to a scalper who would resell them; and if they fell into the hands of the same conductor, he would take them again to his friend the scalper, and the ticket would be resold.

For that reason we placed a limit on all of our local tickets, which does not in any way work a hardship on the public, making them good only for a continuous journey only on the day of sale or on the day following the day of sale; and that rule has been in effect since 1895. I believe our right to do that was challenged at that time. I do not know whether it ever went into the courts, but, while I do not speak from definite knowledge, I believe that the courts have repeatedly upheld the rights of a railroad to limit its transportation, as a reasonable regulation.

The CHAIRMAN. What is the custom of your road in case a man buys a limited ticket and is not able to use it?

Mr. FORT. We redeem it promptly, Mr. Chairman.

The CHAIRMAN. Do you redeem it at its face value, or give him another?

Mr. FORT. We redeem it at its face value without any discount, and as promptly as it is possible for us to do it. That is the universal rule. A ticket that is brought to us personally, brought by the passenger in person, is redeemed immediately. We presuppose, unless we have some knowledge to the contrary, that he is the original purchaser and is entitled to a prompt redemption of the ticket; and we give him his money forthwith.

Mr. KNOWLAND. They are extended, too, are they not, in case of sickness?

Mr. FORT. Yes, in case of illness; and we maintain a force, an ample force, a force of some four or five clerks who are doing nothing else but redeeming tickets.

The CHAIRMAN. Would such a ticket be redeemed at the same office, for instance, at which it was purchased?

Mr. FORT. Yes, sir; the general practice is to allow the selling agent to redeem tickets of his own issue within a reasonable time. The time varies on different roads; sometimes it is ten days, sometimes thirty days; sometimes it can be done indefinitely. There is no universal practice in that regard; but on our road we allow our agents to redeem tickets which they themselves sell within thirty days. That is, if they have not closed their accounts for the current month, they can give a man back his money.

That is all I want to say on that bill, unless you gentlemen wish to ask me some questions.

The CHAIRMAN. I should like to ask you this question: You spoke a little while ago about reviving the scalper. This committee has had a good deal to do in times past with legislation on that point, and has reported on two or three occasions, I think, bills to suppress that individual. What is the present relation of the scalper to the general business of the roads? Is it as great as it used to be, say, ten years ago?

Mr. FORT. Oh, no; by no means. The scalper is practically out of business to-day. In fact, I think, that another year will see his

passing entirely. Unless some conditions arise that we can not now foresee, he will be out of business. The inability, under the Hepburn Act, of weak roads to make secret arrangements with him has really taken away the backbone of his business. The scalper is practically a thing of the past. This would tend to revive them; it would give them some opportunity to speculate in tickets.

I wanted, with the permission of the Chair, to say a few words concerning the universal 2-cent mileage bill which was discussed yesterday, if I may have that permission.

The CHAIRMAN. Proceed.

Mr. FORT. If you will pardon the personal statement, I have been some twenty-odd years in the passenger service, about ten years (not all continuous) with the passenger department of the New York Central. I was secretary of the Central Passenger Association, an organization of carriers between St. Louis and Chicago on the west, and Buffalo and Pittsburg on the east, for some four years; and I was assistant general passenger agent of the Union Pacific Railroad at Omaha for about seven years. So I have had pretty fair opportunities to observe passenger conditions in the different and varying sections of the country. In addition to that, Mr. Chairman, I initiated my railroad career in Cedar Rapids, Iowa, in your State, where I was born; but that does not count for much. I was a boy, then, in the D., C. and R. offices.

The CHAIRMAN. It counts for a great deal, sir.

Mr. ESCH. He has been apologizing for it ever since. [Laughter.]

Mr. FORT. I am proud, gentlemen, to have been born in Iowa. I do not know that it is necessary for me to go into this matter very deeply; but there are some reasons that were not touched upon yesterday. The committee, I thought, brought out a number of reasons why this bill seemed to be unnecessary and impracticable by their questions; but there was one thought that was not touched upon, and that was the impossibility of securing a proper accounting as between carriers on a universal mileage ticket.

There is a most radical difference between a single ticket sold for the transportation of one passenger one time and a mileage ticket. The individual ticket is consecutively numbered; it has a specific value, which is charged to the agent to whom it is given for sale on the books of the company. He must account for it. The railway company is sure to get its money from that agent. He is under bond; and in settling with the connecting carriers on an interline ticket the settlement is made on the basis of sales. That is, once a month the road which sells that ticket reports to its connections on the basis of the tickets it has sold over those connecting lines during the previous month. So that it matters very little to the connecting roads whether that ticket is actually turned in by the conductor and reaches the collections of the carrier or not. They get their revenue just the same. The ticket is merely a token which establishes the right of the passenger to ride on it.

In the case of interchangeable mileage the circumstances are wholly different. That is scrip, if you please. It is the equivalent of so much money—2 cents a mile. It might be honored, if this bill became a law, anywhere, as one of these gentlemen said, from Maine to California. The honoring line would be wholly dependent for the

securing of its revenue upon its conductor to detach and turn in the proper mileage.

Without any reflection upon the conductors, I will state that it has been demonstrated time and again that the railroads can not look to their conductors for the conservation of their revenues. The conductor's duties are multifarious. His most important duty is in the matter of the safety and comfort of his passengers. He has his train orders to look after. He collects his tickets in a more or less perfunctory way, for the reason that with the majority of the forms of transportation it does not make very much difference whether they are turned in or not, for the reasons I have explained. On interline tickets the carriers get their money just the same. These detachments are small and of varying forms, and are frequently lost by the conductor; and the conductor, being human, and therefore frail, if he makes a mistake in a detachment and discovers his mistake before he has made up his report, is quite apt to possibly burn the detachment up instead of sending it in to the auditor. Then the line that honors the ticket and carries the passenger gets nothing whatever for it, because it must have that scrip in its possession and send it to the issuing line in order to collect its revenue.

I hope I have made that point clear. That is a very radical difference between the individual ticket and the mileage ticket.

That salvage from uncollected tickets—and I am speaking now from positive knowledge derived from my connection with the Central Traffic Association—amounts to about 10 per cent. It was sufficient to induce a small Ohio railroad just on the eve of bankruptcy to hypothecate, in the year 1897, a large block of tickets with a Cincinnati scalper, and they sold them to him for less than their actual face value, depending on the salvage. These tickets were honored on all the great trunk lines with which they had managed to make interchange arrangements. They were honored by the Pennsylvania, the "Big Four," the Erie, the C., H. and D., and the other important carriers in Ohio, but the issuing road got all the money, and turned these tickets over to a ticket broker, who used them to deplete the legitimate revenues of these connecting lines.

The CHAIRMAN. Those were mileage books?

Mr. FORT. Those were mileage books; yes, sir. This road passed into the hands of a receiver, and the receiver repudiated these tickets, and the other roads never got a dollar for them. That is history in the railroad world, and if there is any gentleman here from Ohio, he may possibly be able to verify what I have said.

Mr. KENNEDY. I never heard of the actual occurrence, but I can see how that scheme would work.

Mr. FORT. Yes; it is a fact. That was actually done.

Mr. KENNEDY. It occurred to me, however, that if the railroads were willing and anxious to have the universal mileage book, if you had some bureau established, authorized by the Government to issue such books good all over the United States, and then paid the railroads direct from that source when their scrip came in to be redeemed, something of that sort might possibly be effected if there was any reason to have it so.

Mr. FORT. I believe that the sale of mileage tickets is simply a class privilege. It is an evil that has been rather forced on the railroads. The history of the mileage ticket is this, briefly: The pas-

senger men never advocated that form of transportation. It was used originally in the old days by the freight department as a convenient means of taking care of favored shippers. It was usually not sold, but was given away and was used where they preferred to give a man some form of a ticket rather than a pass. Gradually the conditions changed a little, and they began to sell those tickets. The next step was the interchangeable ticket. These organizations of traveling men, who control more or less freight, came to the various traffic associations of the country and plead for an interchangeable ticket; and they brought pressure to bear from the freight departments to have these tickets put on sale. It is an evil that has rather been forced on us. I believe it is discriminatory in practice. The only ground on which it can be defended (and that is an ethical ground that I do not feel competent to discuss) is as to whether the wholesale purchaser of transportation is not entitled to some consideration as against the retail purchaser. But as far as the carriers of this country are concerned, I think they would be very glad indeed to wipe it out to-day entirely if they could.

Mr. ESCH. Are there any roads issuing thousand-mile tickets and over where there is no repayment for the cover?

Mr. FORT. Yes, sir. The New York Central road issues mileage tickets of two denominations—1,000 miles at $20 and 500 miles at $10. These tickets were issued because of a State law passed in New York some years ago which has since been declared unconstitutional; but we put the tickets on in deference to that law without contesting it, and they have become a fixture. It would probably be bad public policy for us to take them off to-day. Those tickets are sold at the flat rate of 2 cents a mile.

Mr. HUBBARD. Are they good except on your own lines?

Mr. FORT. To a limited extent. They are good on all of the New York Central lines, as well as the New York Central and Hudson River proper, which comprise about 40 per cent of the total railway mileage in the State of New York; and they are good on certain other lines that we run through cars to reach—over the Rutland Railroad, for example. We get about 95 per cent of the revenue from the sale of those tickets in our own treasury regardless of whether we collect the detachments or not; so we are running no great risk on the interchangeable feature there. But we do not want to be compelled to interchange business with every carrier throughout the country on a loose, unbusinesslike form of ticket, where we will have no assurance whatever that we will get our money.

Mr. KENNEDY. Do you know any reason why a railroad should not honor its own mileage books over the lines operated by it?

Mr. FORT. No.

Mr. KENNEDY. I do not know whether you know the fact or not, but the Baltimore and Ohio Railroad here sells mileage books that are not good west of Newcastle Junction.

Mr. HUBBARD. Is there not the same difference between the Pennsylvania Railroad and the Pennsylvania mileage west?

Mr. KENNEDY. The Pennsylvania Railroad sells a mileage book east of Pittsburg which is not good on the lines west. Still they are separate corporations.

Mr. HUBBARD. But one is controlled by the other

Mr. KENNEDY. The railroad west of Pittsburg is a separate corporation, closely allied with the Pennsylvania Railroad; but the Baltimore and Ohio is operated clear through to Chicago, and the mileage book that you buy here in Washington you can not use west of Newcastle Junction.

Mr. FORT. I do not know why that is; I am not competent to tell you that.

Mr. KENNEDY. I can not buy a mileage ticket in my own city of Youngstown that will bring me to Washington. They do not have them on sale there. I do not know why they act that way.

Mr. FORT. But you can get two books, can you not, that will bring you here?

Mr. KENNEDY. I can; I can get one book at Youngstown that will carry me 17 miles down across the State line, and then if I get off the train I can buy another; but I can not buy one in Youngstown that will bring me to Washington.

Mr. FORT. That is a condition I can not explain; I do not know why it is.

Mr. ESCH. How about the baggage-checking privileges in connection with these mileage books?

Mr. FORT. We do check baggage through on split transportation. That was brought about by a member of this committee quite recently. Congressman Sherman had some difficulty with the Pennsylvania Railroad in getting baggage checked through via New York on a combination of New York Central and Pennsylvania mileage, and the matter was brought to the attention of our road and the Pennsylvania, and we have made arrangements now under which a practically universal arrangement has been made east of St. Louis and Chicago for the checking of baggage on the combination of mileage or other forms of tickets.

Mr. HUBBARD. That is only where you use union stations in cities, is it not; or do you make city transfer?

Mr. FORT. No; there is a transfer at New York. You can now check through via New York to any point on our line.

Mr. HUBBARD. Is there an additional charge for handling baggage through cities?

Mr. FORT. Yes; whatever the transfer charge may be that we are obliged to pay.

Mr. KENNEDY. I think you ought to do a little missionary work with some of the other railroads. Take the Pennsylvania. I left Columbus a short while back and I had mileage good east of Pittsburg to Washington and a ticket from Columbus to Pittsburg. I wanted to get a berth on a sleeper on my ticket and my mileage. They refused to sell it farther than Pittsburg. When I got to Pittsburg I went in to buy a berth and all the lower berths were gone; and the ticket agent explained that it was a national law that prevented them from accommodating the traveling public in that way.

Mr. FORT. It was my understanding that the Pennsylvania Railroad did——

Mr. KENNEDY. It seemed to me that that road was in some way interested in villifying the laws of its country to make prejudice against national legislation.

Mr. FORT. I can only speak for our own road. Personally I believe (and I know that it is the belief of our executive officers) that the interests of the carriers as well as of the public lie in the direction of giving cheerful and full compliance to the interstate-commerce act. We cooperate with the members of the Ceommission as far as it lies in our power in bringing about compliance on the part of all railways with the administrative rulings that they issue from time to time. Personally, I believe that the law is an unmixed benefit to the carrier, as well as speaking from the standpoint of the passenger department—that it is of as great benefit to the carrier as it is to the public. We want to carry it out, and we want to give you all the help we can, but we do not want——

Mr. KENNEDY. What rate does your road charge in New York State?

Mr. FORT. On our main line we charge, except where we are permitted by the statute to charge a trifle more, 2 cents a mile. That is the prevailing rate on the main line of the New York Central. The rates on the branch lines vary from 2½ to 3 cents a mile. Our most important branch is the Rome, Watertown and Ogdensburg Railroad, which serves the northwestern part of the State of New York. We there voluntarily reduced our rate sometime ago from 3 to 2½ cents. We do not believe that we are quite ready to go to a 2-cent basis there yet. It serves a comparatively sparsely settled part of the State of New York, and I do not believe that our passenger business there is more than barely compensatory.

Mr. KENNEDY. Do you think a railroad that receives a net earning, say, of $25,000 per mile of its track, could afford to carry for 2 cents a mile? In other words, put it this way: If Congress should pass a law limiting the right to charge, basing it upon making those roads that earn large amounts of money and pass through thickly settled communities carry for 2 cents a mile and allowing other roads that make less money and pass through more sparsely settled communities charge a higher rate, would it not be for the best interests of the railroads generally to have national legislation on that subject, rather than to leave the matter undisposed of by us, to be taken up by the States all over the country?

Mr. FORT. It would be preferable to have national legislation on that subject to the ill-considered State legislation that has prevailed during the past few years. I just came back to the New York Central on the 1st of June; I went through a campaign in the legislature of the State of Nebraska in the interest of the Union Pacific Railroad last winter. Prior to last winter they had been sending the lawyers down to Lincoln to talk on these topics; and last year, when it was a lost cause, they sent the traffic men down. [Laughter.] They would not listen to us. I could have proved beyond peradventure that the passenger business of the Union Pacific Railroad was absolutely unremunerative; that there was not a branch line in the State of Nebraska that did not show a deficit; that the main line barely earned operating expenses, and did not contribute a dollar to fixed charges or dividends. They would not listen to any argument. They just put the thing right through, and tacked an emergency clause on it making it take effect within three days from the date it was signed by the governor. If we are going to have national legis-

lation regulating our passenger fares, we would prefer it to State legislation of that kind.

Mr. KENNEDY. It has occurred to me that if we had taken the matter up and passed some sort of a law that would have been fair to the railroads, that would have obviated a great deal of this action upon the part of the States.

Mr. FORT. That is possibly true.

Mr. HUBBARD. Was your main line 2-cent rate fixed voluntarily?

Mr. FORT. Yes and no. Under the consolidation act, under which a number of small roads were allowed to combine and form the New York Central, our charter rate was fixed at 2 cents a mile between way stations—between Albany and Buffalo. That is the old New York Central road. The New York Central originally, I believe, under its charter—Mr. Paulding will correct me if I am mistaken—was allowed to charge 3 cents a mile during certain seasons of the year and 2 cents a mile for the remainder of the year. I refer to the Hudson River road, between New York and Albany. They voluntarily went to a 2-cent basis there. Since that time the general railroad act of New York wiped out the regulation of our fares on the Hudson River division between New York and Albany, so that to-day we might charge the maximum statutory rate of 3 cents a mile if we deemed it advisable to do so. But our rate there is 2 cents a mile on the Hudson division. It is 2 cents a mile from New York to Buffalo, except that between terminals, between Albany and Buffalo, the rate is slightly higher than 2 cents.

Mr. HUBBARD. The local rate, do you mean?

Mr. FORT. Yes, sir.

Mr. BUCKLAND. That is all a voluntary rate.

Mr. FORT. Yes.

Answering your question about the matter of national legislation, I do not know that this is a direct answer to it, and I do not know but what I am going out of my way in saying this; but I believe that competition will regulate these rates. Without competition the development of business soon stops. As fast as the country grows, the rates of passenger fares are going to be properly regulated. I hold no brief for the freight department; there may have been many reprehensible practices in the conduct of freight business, but I do not believe they can be charged to the door of the passenger business; and I believe it is best for the country to let the passenger tub stand on its own bottom. What this country wants more than the 2-cent fare is a continuance of the development of good service under the stimulus of competition. If you are going to take all the fat, all the profit, out of the passenger business, it can not be expected, in the nature of things, that the carriers are going to work very hard to improve their service under an unprofitable rate.

That is all I have to say, gentlemen. I thank you.

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